

**BROWN COUNTY INDIANA**  
**ZONING ORDINANCE**

AN ORDINANCE FOR THE DEVELOPMENT THROUGH ZONING OF  
UNINCORPORATED AREAS OF BROWN COUNTY INDIANA.

Be it ordained by the Board of County commissioners of Brown County, Indiana, under the  
authority of Chapter 174, as amended, General Assembly of the State of Indiana:

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## CHAPTER 1 – TERMINOLOGY

### 1.1 SHORT TITLE AND PURPOSE

- A. This ordinance may be cited as the "Brown County Zoning Ordinance".
- B. These regulations have been adopted in order to:
1. promote the orderly, responsible and beneficial development and use of land within the County Jurisdictional Area;
  2. promote the public health, safety, comfort, convenience and general welfare of the residents and guests of the County;
  3. protect the character and stability of residential, business and natural areas; and,
  4. provide alternative accommodations for tourists in residential areas that have a limited impact on residential neighborhoods.

### 1.2 DEFINITIONS

As used in this ordinance, the term:

**accessory building** - means a subordinate building that is located on the same lot as a principal building and not used or designed for human occupancy;

**accessory use** - means a subordinate use that relates to the same lot as a primary use and is a use other than human occupancy;

**aircraft** - any contrivance, now known or hereafter invented, for use or designed for navigation of or flight in the air or outer space, including missiles; (8/29/84)

**airport** - means any area which is used or intended to be used for the taking off or landing of aircraft including helicopters, and any appurtenant areas which are used or intended to be used for airport buildings or facilities, including open spaces, taxiways and tie down areas; (8/29/84)

**alley** - means a right of way, other than a street, road, crosswalk, or easement, that provides secondary access for the special accommodation of the abutting property;

**antenna array** – one or more whips, panels, discs or similar devices used for the transmission or reception of radio frequency signals, which may include omni-directional antenna (whip), directional antenna (panel) and parabolic antenna (disc). The antenna array does not include the Support Structure as defined in this chapter;

**apartment house** - means the same as dwelling multi-family; (8/29/84)

**attached wireless communications facility (attached WCF)** – means an antenna array that is attached or affixed to an existing building or structure (including but not limited to a utility pole, sign or water tower), along with an transmission cables and accompanying pose or device that attaches or affixes the antenna array to the existing building or structure;

**bed and breakfast establishment** – means an operator occupied residence, which provides up to seven (7) guest rooms to the public for a fee, and as part of the fee provides breakfast and sleeping accommodations on a temporary basis (i.e., no more than thirty (30) consecutive days to a particular guest). The term does not include hotels, motels, boarding houses, or food service establishments;

**block** - means an area that abuts a street and lies between two adjoining streets or barriers such as a railroad right-of-way or a waterway;

**board** - means the Brown County Board of Zoning appeals;

**boarding house** - means a building not available to transients, in which meals are regularly provided for compensation for at least 3 but not more than 30 persons;

**building** - means a roofed structure for the shelter, support, enclosure, or protection of persons, animals, or property (each part of such a structure that is separated by the rest by unbroken party walls is a separate building for the purposes of this ordinance);

**building area** - means the horizontal protected area of the buildings on a lot, excluding open areas or terraces, unenclosed porches not more than one story high, and architectural features that project no more than 2 feet;

**building line** - means the lines that establish the minimum permitted distance on a lot between the front line of a building and the street right-of-way;

**business** - refers to the purchase, sale, or exchange of goods or services, or the maintenance for profit of offices or recreational or amusement enterprises;

**business district** - refers to AB and GB Districts;

**cemetery** - includes any columbarium, crematory, mausoleum, or mortuary, operated in conjunction with and on the same tract as the cemetery;

**certificate of occupancy** - means a certificate issued by the Director and/or Zoning Inspector stating the occupancy and use of land or building or structure referred to, therein, complies with the provisions of this ordinance; (8/29/84)

**clinic** - means an establishment in which patients are admitted for medical or dental study or treatment and in which the services of at least two physicians or dentists are provided;

**co-location** – means use of a common WCF or common support structure by two or more wireless communications license holders or by one wireless communications license holder for more than one type of communications technology, or, placement of a WCF on a structure owner or operated by a utility or other public entity, or, placement of an attached WCF;

**Commission** - means the Brown County Area Plan Commission;

**corner lot** - means a lot at the junction of and abutting two intersecting or intercepting streets;

**county** - means Brown County, Indiana;

**detached building** - means a building that has no structural connection with another building;

**development** for purposes of flood plain management, shall have the meaning set forth in Chapter 10, Section 2 of the Brown County Zoning Ordinance;

**directional sign** - means a sign containing information limited to the name or the business, the nature of the business, the business logo, if any, and the distance and direction to the use being advertised;

**drive-in facility or establishment** - means any place or premises used for sale or serving of food, refreshments, beverages or services in automobiles, including those establishments where customers may serve themselves and may carry out or consume the above on or off the premises; (8/29/84)

**director** - means the Director or the Brown County Area Plan Commission; (8/29/84)

**dwelling** - means a building or a part of a building, and associated accessory buildings that shall be used primarily as a place or abode, but not including hotel, motel, lodging house, boarding house or tourist home;

**dwelling unit** - means a dwelling or part of a dwelling used by one family as a place of abode;

**dwelling single-family** - means a detached building designed for or occupied by one family; (8/29/84)

**dwelling two-family** - means a building designed for or occupied by two families living in separate units; (8/29/84)

**dwelling multi-family** - means a building designed for or occupied by three or more families living in separate units; (8/29/84)

**equipment facility** – means any accessory structure used to contain ancillary equipment for WCF, which may include cabinets, small shelters, pedestals, or other similar structures.

**equipment storage** - applies to a (one) building the purpose of which is limited to the storage and maintenance only of equipment and materials to be used in a business, which business is owned in part or entirely, by the person or organization which owns the property on which said building is located, and which business is carried on entirely off of said property; provided that this building is not used for the sale, trade, barter, or lease of the equipment stored therein. This definition shall not apply to any building used as a "shop" for a business in which materials are assembled or dismantled, or which serves as the "office" for the business involved. If such building is used in this manner, then "business" zoning must be obtained;



**existing manufactured home park, P.U.D. or subdivision** for purposes of flood plain management, shall have the meaning set forth in Chapter 10, Section 2 of the Brown County Zoning Ordinance;

**expansion to an existing manufactured home park, P.U.D. or subdivision** for purposes of flood plain management, shall have the meaning set forth in Chapter 10, Section 2 of the Brown County Zoning Ordinance;

**family** - means one or more persons living as a single housekeeping unit, but not including a group occupying a hotel, club, nurse's home, dormitory, or fraternity or sorority house;

**farm, confinement feeding** - means any operations involving the production of livestock or fowl or related operations, indoors or outdoors, wherein more than 100 head of livestock or 5,000 fowl are kept within buildings or structures or in paved or unpaved feed lots, wherein five square feet or less of feed lot area is provided per laying hen, or eight square feet or less per hog weighing 225 pounds or less, or fifteen square feet or less per lamb or ewe, or fifty square feet or less per sow, or fifty square feet or less per feeder steer, or one hundred square feet or less per dairy cow, provided that this definition shall not apply to operations involved with processing of products of confinement feeding operations; (8/29/84)

**farm, general** - means an area, containing five (5) acres or more, used for agricultural operations, including truck gardening, forestry, the operation of a tree or plant nursery, or the production of livestock and poultry;

**FBFM** for purposes of flood plain management shall have the meaning set forth in Chapter 10, Section 2 of the Brown County Zoning Ordinance;

**feeder street** - is a street planned to facilitate the collection of traffic from local streets, and to provide circulation within neighborhood areas and convenient ways for traffic to reach major streets;

**FEMA** for purposes of flood plain management shall have the meaning set forth in Chapter 10, Section 2 of the Brown County Zoning Ordinance;

**FHBM** for purposes of flood plain management, shall have the meaning set forth in Chapter 10, Section 2 of the Brown County Zoning Ordinance;

**FIRM** for purposes of flood plain management, shall have the meaning set forth in Chapter 10, Section 2 of the Brown County Zoning Ordinance;

**flea market** - means flea market, swap shop or meet, or similar activity, by whatever name, or those uses which involve the setting up of two or more booths, tables, platforms, racks or similar display areas for the purpose of selling or buying merchandise, goods, materials, products, or other items offered for sale outside a fully enclosed building. A "flea market" as defined herein shall not be intended to include a garage sale or bake sale, which occurs no more often than every two months for a period of not more than seven days, fruit and produce stands, booths in a fully enclosed building or art festivals or any similar activity or sales done by local civic groups or by local non-profit organizations;

**flea market vendor** - means any individual, family, corporation, partnership, firm, organization, or any group that acts as a unit, which rents, buys, or occupies display area space in a flea market for the purpose of selling merchandise, goods, materials, products, or other items;

**flood or floodwater** - means the water of any lake or watercourse which is above the banks and/or outside the channel and banks of such watercourse;

**floodway** - means the channel of a river or stream and those portions of the floodplains adjoining the channel which are reasonably required to efficiently carry and discharge the peak flood flow of the regulatory flood of any river or stream. Areas making up a floodway may be identified by formal action of the Natural Resources Commission or established by the Department of Natural Resources on a case-to-case basis;

**floodway fringe** - means those portions of the flood hazard areas lying outside the floodways;

**flood hazard area** - means those flood plains which have not been protected adequately from flooding by the regulatory flood by means of dikes, levees, reservoirs, or other works approved by the Natural Resources Commission;

**flood plain** - means the area covered by floodwaters from the regulatory (one-hundred year) flood;

**flood proofed buildings** - means a commercial or industrial building designed to exclude floodwaters from the interior of the building. All such flood-proofing shall be adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the regulatory flood;

**flood protection grade** - means the elevation of the lowest floor of a building or structure. If a basement is included, the basement floor is considered the lowest floor. *Exception:* If a commercial or industrial building is flood-proofed as hereinafter defined, the term "flood protection grade" applies to the water surface elevation for which the building is protected;

**front line** - with respect to a building, means the foundation line that is nearest the front lot line;

**front lot line:**

1. for an interior or through lot, means the line marking the boundary between the lot and the abutting street; and
2. for a corner lot, means the line marking the boundary between the lot and each abutting street; (8/29/84).

except as deed restrictions specify otherwise;

**front yard** - means a yard that is bounded by the front line of the principal buildings, by the adjacent street right-of-way, and by the segments of the side lot lines that they intercept;

**floor area** - means the total number of square feet of usable floor space within the exterior walls of a building exclusive of vent shafts and courts. The floor area of a building not provided with surrounding exterior walls shall be the usable area under the horizontal protection of the roof or floor above. (8/29/84)

**garage private** - means a detached accessory building or a portion of a main building on the same lot as a dwelling for the housing of vehicles of the occupants of the dwelling, including carports; (8/29/84)

**garage public** - means any garage other than a private garage, for the parking of vehicles; (8/29/84)

**general industrial use** - means manufacturing, processing, extraction, heavy repairing, dismantling, storage, or disposal of equipment, raw materials, manufactured products or wastes, in which some operations, other than transportation, are performed in open areas;

**ground floor area** - means the area of a building in square feet, as measured in a horizontal plane at the ground floor level within its largest outside dimensions, exclusive of open porches, breeze-ways, terraces, garages and exterior or interior stairways;

**guest room** – means any room in a tourist home or in a bed and breakfast establishment that is equipped and /or intended for use as a bedroom, including rooms equipped with sleeper sofas;

**height** - with respect to a building, means the vertical distance from the lot ground level to the highest point, for a flat roof; to the deck line, for a mansard roof and to the mean height between eaves and ridges, for a gable, hip, or gambrel roof;

**height, WCF** – means the vertical distance of a WCF or support structure, as measured from the ground elevation at the base of the WCF or support structure to the top of the structure, including antenna array(s);

**home occupation** - means an accessory use of a dwelling unit, for monetary or equivalent gain, conducted entirely within said dwelling unit, carried on by one or more persons, all of whom reside within the dwelling unit, and, unless specifically authorized herein, where no persons are employed other than resident and domestic help. The use is clearly incidental and secondary to the use of the dwelling for residence purposes and does not change the character thereof or adversely affect the uses permitted in the residential district of which it is a part. There shall be no outside storage of any kind and any indoor storage, construction, alterations, or electrical or mechanical equipment used shall not change the fire rating of the structure or the fire district in which the structure is located;

**home stay** – means a single-family residence that is occupied by the owner and that is used to provide up to two (2) guest rooms to the public for a fee;

**hotel** - means a building in which lodging is provided and offered to the public for compensation, and which is open to transient guests, in contradiction to a boarding or lodging house; (8/29/84)

**improvement location permit** - means a permit signed by the Director stating that a proposed improvement complies with the provisions of this ordinance and such other ordinances as may be applicable; (8/29/84)

**interior lot** - means a lot other than a corner lot or a through lot;

**junk yard** - means a place, usually outdoors, where waste or discarded used property other than organic matter is accumulated and is or may be salvaged for re-use or resale;

**kennel** - means a place primarily for keeping 4 or more dogs, or other animals, that are ordinarily kept as pets and are at least 4 months old;

**light industrial use** - means manufacturing, processing, extraction, heavy repairing, dismantling, storage, or disposal of equipment, raw materials, manufactured products or wastes, in which all operations, other than transportation, are performed entirely within enclosed buildings and for which all loading and unloading facilities are enclosed;

**limited access highway** - means a highway to which abutting properties are denied access;

**local manager** – means a person who is responsible for responding to any complaints regarding the property subject to the permit and/or approval, and whose primary place of business is within a reasonable thirty minute drive from the property subject to the permit and/or approval;

**local street** - is a street used primarily for access to abutting properties, usually residential. Certain local streets may be Marginal Access Streets parallel to Limited Access Major Streets, State Feeder Highways, or State Arterial Highways, thereby providing access from properties abutting such Marginal Access Streets to access points on such limited Access Streets or Highways;

**lodging house** - means a building, not available to transients, in which lodgings are regularly provided for compensation for at least 3 but not more than 30 persons;

**logging operation** - means the harvesting and/or removal of logs from a forest over county highway, by a logging or trucking operator; (8/29/84)

**LOMA or letter of map amendment** for purposes of flood plain management shall have the meaning set forth in Chapter 10, Section 2 of the Brown County Zoning Ordinance;

**LOMR or letter of map revision** for purposes of flood plain management shall have the meaning set forth in Chapter 10, Section 2 of the Brown County Zoning Ordinance;

**lot** - means an area of land, exclusive of street areas but including adjacent areas that are used as one, at least 60 per cent of whose lot width abuts a street;

**lot coverage** - means the percentage of the lot area that is represented by the building area;

**lot ground level** -

1. for a building having walls abutting (that is, generally parallel to and not more than 5 feet from) one street only, means the elevation of the sidewalk at the center of the wall abutting the street;
2. for a building having walls abutting more than one street, means the average of the elevations of the sidewalk at the centers of all walls that face streets, and;
3. for a building having no wall abutting a street, means the average level of the ground adjacent to the exterior walls of the building each abutting street; 8/29/84)

**lot width** - means the distance between the side lot lines as measured on the building line;

**lowest floor** for purposes of flood plain management shall have the meaning set forth in Chapter 10, Section 2 of the Brown County Zoning Ordinance;

**major street** - means a street designated for large volumes of traffic movement. Certain major streets may be classed as limited access streets to which entrances and exits are provided only at controlled intersections and access is denied to abutting properties;

**manufactured home** for purposes of flood plain management shall have the meaning set forth in Chapter 10, Section 2 of the Brown County Zoning Ordinance;

**mineral extraction** - means the (1) mining or quarrying, and (2) removal of earth materials;

**mobile home** - means a vehicle or other portable structure more than 30 feet in length that is designed to move on the highway and designed or used as dwelling;

**mobile home park** - means an area of land on which 2 or more mobile homes are regularly accommodated with or without charge, including any building or other structure, fixture, or equipment that is used or intended to be used in providing that accommodation;

**mobile home tie downs (Schedule A)** - means sufficient anchorage to resist flotation, collapse or lateral movement of any mobile home, at a minimum, such anchorage shall consist of: (1) over-the-top ties be provided at each of the four corners of the mobile home, with two additional ties per side at intermediate locations, with mobile homes less than 50 feet long requiring only one additional tie per side; (2) frame ties be provided at each corner of the home with five additional ties per side at intermediate points, and with mobile homes less than 50 feet long requiring only four additional ties per side; (3) all components of the anchoring system capable of carrying a force of 4,000 pounds and (4) any additions to the mobile home be similarly anchored;

**motel** - means a building or group of buildings in which lodging is provided and offered to the public for compensation, and catering primarily to the public traveling by motor vehicles;

**natural resources** - means the Indiana Natural Resources commission;

**non-conforming use** - means a use that exists at the time a provision of this ordinance is passed but does not comply with it;

**off-premise** - means other than on the parcel of real estate upon which the use being advertised is located. This term shall not be construed, however, to allow advertising by connecting an otherwise off-premise location to a parcel upon which the use being advertised is located by a narrow strip of land. The intent is that signs other than directional signs be located on a parcel directly connected with, and in the immediate vicinity of, the use;

**open use** - means the use of a lot without a building, or a use for which a building with a floor area no larger than 5 per cent of the lot area is only incidental;

**person** - includes a corporation, firm, partnership, association, organization, or any other group that acts as a unit;

**planned unit development** – means a type of land regulation which permits large scale, unified land development in a configuration and possibly in a mix of uses not otherwise permitted “as of right” under the Brown County Zoning Ordinance, but requiring under that Ordinance a special review and approval process. A Planned Unit Development may be established for predominantly Residential (Planned Residential Development), Commercial (Planned Commercial Development) or Industrial (Planned Industrial Development) purposes.

**plat** - means a map or chart that shows a division of land and is intended to be filed for record;

**principal building** - means a building in which the principal use of the lot on which it is located is conducted, including a building that is attached to such a building in a substantial way, such as by a roof (with respect to residential uses, it means the main dwelling);

**private garage** - means a garage whose principal use is to house motor vehicles for the accommodation of related dwelling units or related business establishments;

**private school** - means a school other than a public school;

**professional office** - means an office used by members of a recognized profession such as architects, artists, dentists, engineers, lawyers, musicians, physicians, and surgeons;

**public camp** - means an area of land used or designed to be used to accommodate two or more camping parties, including cabins, tents or other camping outfits, but not including a travel trailer park;

**public garage** - means a garage other than a private garage, whose services are available to members of the public or to persons occupying a hotel, club, or similar facility;

**public street** - means a street established for or dedicated to the public use;

**rear lot line** - for an interior or corner lot means the lot line that is opposite the front lot line and farthest from it, except that for a triangular or other irregularly-shaped lot it means the line 10 feet long, parallel to the front lot line, and wholly within the lot, that is farthest from the front lot line;

**rear yard** - means a yard that extends across the full width of a lot and is bounded on the rear by the rear lot line, and the depth of which is the least distance between the rear lot line and the rear of the principal building;

**recyclable materials** means materials that are designated as accepted by the Brown County Solid Waste District and are acceptable for recycling as defined in the Indiana Code.

**recycling** means a process by which materials that would otherwise become solid waste are collected, separated for processing, and converted into materials or products for reuse or sale.

**recycling facility** means a facility where recyclable materials are transferred from a vehicle or a container to another vehicle or container for transportation. The term does not include the following: (1) a stand-alone roll-off recycling collection box; (2) a stand-alone recycling trailer; (3) a stand-alone dumpster designated for recyclable materials.

**regulatory flood** for purposes of flood plain management, shall have the meaning set forth in Chapter 10, Section 2 of the Brown County Zoning Ordinance;

**regulatory flood profile** for purposes of flood plain management shall have the meaning set forth in Chapter 10, Section 2 of the Brown County Zoning Ordinance;

**residence district** - refers to R1, R2, FR, and LR Districts;

**restaurant** - means a building or structure in which food and drinks are prepared primarily for sale and consumption within such structure, including incidental take-out service; (8/29/84)

**road** - see **street**;

**school, private** - means a school other than a public school; (8/29/R4)

**school, public** - means an institution conducting regular academic instruction at kindergarten, elementary, and secondary levels; (8/29/84)

**side lot line** - means a lot boundary line other than a front or rear lot line;

**side yard** - means a yard, between the principal building and the adjacent side lot line, that extends from the front yard, or street right-of-way where there is no front yard, to the rear yard, and the width of which is the least distance between the side lot line and the adjacent side of the building;

**sign** - means a visual device or structure used for advertising, display, or publicity purposes;

**solid waste** - is defined, for the purposes of this ordinance, as it is defined in the Indiana Code.

**solid waste convenience station facility** - means a facility where household solid waste, transported to the facility by the generating household, is transferred from a vehicle to a collection container. The term does not include the following: (1) a facility accepting commercially generated and/or collected solid waste; (2) a recycling facility.

**solid waste transfer station facility** - means a facility where solid waste is transferred from a vehicle or a container to another vehicle or container for transportation. The term does not

include the following: (1) a facility where the solid waste that is transferred has been generated by the facility; (2) a solid waste convenience station facility; (3) a recycling facility.

**special exception** - means the authorization of a use that is designated as such by Section 3.1 as being permitted in the district concerned if it meets special conditions and, upon application, is specifically authorized by the Board under Section 3.3;

**state arterial highway** - means a state highway primarily for heavy through traffic, capable of handling high traffic volumes;

**state feeder highway** - means a state highway primarily for medium through traffic, capable of handling medium traffic volumes;

**stealth design** – shall include those design and construction techniques used to disguise WCF and support structures and /or conceal an antenna array. Examples include, but are not limited to, rooftops, flagpoles, light poles, bell and clock towers, signs, water towers, silos, steeples, and chimneys;

**street** - means a right-of-way thoroughfare, other than an alley, dedicated or otherwise legally established to the public use, usually affording the principal means of access to abutting property;

**structural change** - means a substantial change in a supporting member of a building such as a bearing wall or partition, column, beam, or girder or in an exterior wall or roof;

**structure** - means anything constructed or erected that requires location on or in the ground or attachment to something having a location on or in the ground. For flood plain management purposes, the term “structure shall have the meaning set forth in Chapter 10, Section 2 of the Brown County Zoning Ordinance;

**substantial modification** - means any alteration, repair, enlargement or extension of an existing building. Such substantial modification is considered to occur when the first alteration of any wall, ceiling, floor or other structural element of the building commences. This term does not, however, include either (1) any project for improvement of a structure to comply with existing health, sanitary or safety code specifications or (2) any alterations of a structure listed on the National Register of Historic Places or the Indiana State Survey of Historic, Architectural, Archaeological and Cultural Sites, Structures, Districts and objects;

**support structure** – means any structure designed and constructed specifically to support an antenna array, and may include a monopole, self-supporting (lattice) tower, guy-wire support tower and other similar structures. Any device used to attach an attached WCF to an existing building or structure shall be excluded from this definition;

**temporary WCF** – means any portable antenna array or attached WCF that is designed for temporary placement and does not require the construction of a support structure.

**through lot** - means a lot fronting on two parallel or approximately parallel streets;

**tourist home** - means a building in which not more than 5 guest rooms are used to provide or offer overnight accommodations to transient guests for compensation;



**tourist home building** – means a building in which a tourist home is operated;

**trade or business school** - means a secretarial or business school or college that is not publicly owned, is not owned, conducted, or sponsored by a religious, charitable, or non-profit organization, and is not a school conducted as a commercial enterprise for teaching instrumental music, dancing, barbering, hairdressing, or the industrial or technical arts;

**travel trailer** - means a vehicle or other portable structure 30 feet or less in length that is designed to move on the highway and designed or used as a dwelling;

**travel trailer park** - means an area of land on which 2 or more travel trailers are regularly accommodated with or without charge, including any building or other structure, fixture, or equipment that is used or intended to be used in connection with providing that accommodation;

**utility structure** – means any structure owned and/or operated by a public utility regulated by the Utilities Regulatory Commission (URC), excepting all WCF and/or support structures;

**variance** - means a special authorization granted under Section 3.4, to deviate from what the ordinance otherwise prescribes;

**warehouse** - means a building or place where goods of 3 or more owners are received to store for hire;

**wireless communications** – means any wireless services as defined in the Federal Telecommunications Act, which includes FCC licensed commercial wireless telecommunications services (PCS, specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging, and other similar services that currently exist or that may in the future be developed;

**yard** - means a space on the same lot with a principal building that is open and unobstructed except as otherwise authorized by this ordinance;

**zoning inspector** - means the Zoning Inspector appointed by the Brown County Area Plan Commission; (8/29/84)

## CHAPTER 2 – DISTRICTS

### 2.1 KINDS OF DISTRICTS: ESTABLISHMENT

A. The unincorporated areas of the county are divided into the following districts:

1. **FLOOD PLAIN DISTRICT (FP)** is designed to guide development in those areas identified as approximate 100 year flood boundaries by the Flood Boundary and Floodway Maps for Brown County, Indiana, by the Indiana Department of Natural Resources, by the Federal Emergency Management Agency, or as Zone A on the Flood Insurance Rate Maps for Brown County, Indiana. The FP district may stand by itself or it may be combined with any other district.
2. **FLOOD-WAY DISTRICT (FW)** is designed to guide development in areas identified as a floodway by the Flood Boundary and Floodway Maps for Brown County, Indiana, by the Department of Natural Resources, or by the Federal Emergency Management Agency based on a detailed flood hazard area assessment. The FW district may stand by itself or it may be combined with any other district.
3. **FLOOD-WAY FRINGE DISTRICT (FF)** is designed to guide development in areas identified as a floodway fringe by the Flood Boundary and Floodway Maps for Brown County, Indiana, by the Indiana Department of Natural Resources, or by the Federal Emergency Management Agency, based on detailed flood hazard area assessment. The FF district may stand by itself or it may be combined with any other district.
4. **FOREST RESERVE DISTRICTS (FR)** are established to include land that is for the most part rough terrain and where there is extensive public ownership of forest lands.
5. **PRIMARY RESIDENCE DISTRICTS (RI)** are established to include areas that can be served by water or sewage utility systems, principally along State Highways and at present urban centers.
6. **SECONDARY RESIDENCE DISTRICTS (R2)** are established to include areas that have been subject to urbanization on a scattered pattern, principally along County Highways.
7. **LAKE RESIDENCE DISTRICTS (LR)** are established to include areas that adjoin extensive bodies of water in the county and are suitable for seasonal or permanent residences.
8. **GENERAL BUSINESS DISTRICTS (GB)** are established to include areas that are appropriate to all kinds of business and services.
9. **ACCOMMODATION BUSINESS DISTRICTS (AB)** are established to include areas that are close to LR Districts and appropriate to the limited shopping and service needs of those districts.

10. **INDUSTRIAL DISTRICTS (I)** are established to include most of the existing industrial facilities and areas best suited for future industrial use because of location, accessibility, and other conditions.
- B. In the "FP", "FW" and "FF" Districts established herein, the degree of flood protection established in this ordinance is considered reasonable for regulatory purposes and is based on engineering and scientific considerations.

Large floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes such as ice or debris jams. This ordinance does not imply that areas outside flood hazard districts as defined here-in, will be free of flooding or flood damage. This ordinance does not create any liability on the part of the County of Brown, Indiana, the Plan Commission, the Department of Natural Resources, the State of Indiana, or any elected or appointed official or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

- C. All three districts, FP, FW, FF are subject to flooding by the regulatory flood. The "Flood-Way and "Flood-Way Fringe" districts are always to be used together. The "Flood plain" district is used by itself and does not overlap either of the other districts.
- D. If a high quality assessment of flood hazard areas has been made, the use of the "flood-way" - "flood-way fringe" combination can be used. Use of these two districts requires a definition of the area flooded by the one hundred year flood, the breakdown of this area into the two districts and a profile of that flood. If flood prone areas have been identified (with or without flood profiles) and floodway data is unavailable, the "flood plain district" should be used.
- E. If a FIA Flood Insurance Study has been completed for a community, the flood plain, flood-way or flood-way fringe district delineations should reflect at a minimum the delineations published in the Flood Insurance Study.

## 2.2 BOUNDARIES IN GENERAL

- A. The boundaries of the districts established by Section 2.1 are as shown on the zone maps, which are a part of this ordinance. Except as provided by Section 2.3, Section 2.4 and Section 2.5 such boundaries may be changed only by amending this ordinance.
- B. When the exact boundaries of a district are uncertain, they shall be determined by use of the scale in the zone maps or, in the case of a flood plain, by the Indiana State Department of Natural Resources-Division of Water, The Corps of Engineers, The U.S. Geological Survey or other reliable sources.
- C. When a right-of-way is vacated, the districts adjoining each side are respectively extended to the center of the area so vacated.
- D. If the boundary line of a district divides a lot having frontage on a street so that the front part of the lot lies in one district and part of the lot lies in another, a restriction that applies to the front part of the lot applies to the entire lot.

### 2.3 BOUNDARIES: FLOOD DISTRICTS

The flood plain districts (areas subject to inundation by the regulatory flood) as identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for Brown County, Indiana" dated January 3, 1986, with the accompanying Flood Insurance Rate Maps and Flood Boundary and Floodway Maps along with any subsequent revisions to text or maps are hereby adopted by reference and declared to be a part of this ordinance. The zone maps of this ordinance are hereby amended to conform to the boundaries of the Flood Plain (FP) District, the Floodway Fringe (FF) District, and the Floodway (FW) District as defined in Section 2.1 (a), and as delineated on the Flood Insurance Rate Map and the Flood Boundary and Floodway Map.

1. Where land was formerly designated as a FP District only, but is no longer included as a FP District by this amendment, and where said land is bounded on all sides by the same zone as determined by the zone map, then said land shall be zoned the same as the surrounding land.
2. Where said land is bounded by a State or County Highway and is bounded on all other sides by one zone as determined by the zone map, said land shall be zoned pursuant to the terms of Section 2.5 of this Ordinance as to that portion of the land to which Section 2.5 applies, the balance of said land shall be zoned to conform with the zoning of the surrounding area as shown on the zone map.
3. Where said land is bounded by land which is zoned according to the zone map by two or more different zones, then said land shall be rezoned by further amendment to this ordinance by the proper legislative body.

### 2.4 BOUNDARIES: FOREST RESERVE DISTRICTS

The boundary of an FR District will be subject to change as the boundaries of R1, R2, and LR Districts are adjusted as provided in Section 2.5.

### 2.5 BOUNDARIES: RESIDENTIAL DISTRICTS

- A. The boundaries of R1 and R2 Districts, other than those specifically shown on the Zone Map, are intended to be parallel, or approximately parallel, to the existing state and county highways and include lands adjacent to those highways for a distance of 300 feet on each side of the highway centerlines, the R1 District adjoining the state highways and the R2 District adjoining the county highways; however, any parcel of land fronting on a public high-way and having a lot width of at least 100 feet, to be improved for one principal building, or as a subdivision for which a plat is to be recorded, is included within the R1 District, if adjoining a state highway, or the R2 District, if adjoining a county highway, irrespective of the distance between the highway centerline and the rear lot line.
- B. The boundary of an LR District, other than specifically shown on the Zone Map, shall include residential lands adjoining a newly established reservoir at a site approximately as shown in the county comprehensive plan upon the approval of a Development Plan by the Commission in accordance with Title III of this ordinance.

## CHAPTER 3 - AUTHORIZED USES

### 3.1 PRIMARY USES

Primary uses are authorized in the districts established by or under Section 2.1, as shown in the following table, where the district designation is marked with an **asterisk**, the use is permitted in that district only if a special exception has been granted under Section 3.4. Where it is marked by a **double asterisk**, the use is permitted in that district only if it has been approved by the Commission as necessary to the convenience of employees and effective operation of an Industrial use.

### 3.2 ACCESSORY USES

A. Accessory uses such as the following are authorized in all districts:

- Bird baths and bird houses
- Buildings (such as garages, studios and tool sheds)
- Curbs
- Driveways
- Fences and hedges
- Lamp posts
- Mail boxes
- Name plates
- Parking spaces
- Public utility installations (such as utility wire poles, hydrants, and telephone booths)
- Retaining walls
- Trees, shrubs, plants, and flowers
- Walks

B. For any primary use for which a special exception is prescribed by Section 3.1, an outdoor sign that advertises that use is authorized as an accessory use, if the sign is located on the same property as the use and the sign is approved by the Board. Directional signs may be allowed if approved by the Board.

### 3.3 FLOOD PLAIN (FP), FLOODWAY (FW), AND FLOOD FRINGE (FF) USES

A. In Floodway (FW) Districts and Flood Plain (FP) Districts, the following uses are authorized, provided they do not involve the erection of any structure or obstruction, the opening of any excavation or the disposition of any material or substance, and comply with other provisions of this ordinance.

1. Agriculture uses such as the production of crops, pastures, orchards, plant nurseries, vineyards, and general farming.
2. Forestry, wildlife areas, and nature preserves.
3. Parks and recreational uses, such as golf courses, driving ranges, and play areas.

**PRIMARY USE****DISTRICTS IN WHICH PERMITTED**

	FP	FR	R1	R2	LR	GB	AB	I
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**RESIDENTIAL USES**

Boarding or lodging house						GB	AB	
Dwelling, single family		FR	R1	R2	LR	GB	AB	
Dwelling, two-family		FR	R1	R2		GB	AB	
Dwelling, multi-family			R1*	R2*		GB	AB	
Equipment storage	FP*	FR*	R1*	R2*		GB	AB	I
Farm seasonal worker housing		FR	R1	R2	LR	GB		I
Fraternity, sorority, or student cooperative		FR	R1	R2	LR	GB		
Home for the aged		FR		R2	LR	GB		
Nursing home		FR		R2	LR	GB		
Private swimming pool	FP	FR	R1	R2	LR	GB		I*

**AGRICULTURAL USES**

Artificial lake of 3 or more acres	FP*	FR*	R1*	R2*	LR*	GB*		I*
Commercial greenhouse	FP*	FR*		R2*	LR*	GB		I*
Farm	FP	FR	R1	R2	LR	GB	AB	I
Plant nursery	FP	FR	R1	R2	LR	GB	AB	I

**INDUSTRIAL USES**

Bottled gas storage & distribution		FR*						I*
Industrial Park								I*
Industry, general		FR*						I*
Industry, light	FP*	FR*				GB		I
Junk yard		FR*						I*
Liquid fertilizer storage and distribution		FR*						I*
Manufacturing, storage or use of explosives	FP**	FR**						I**
Mineral extraction		FR*						I
Mineral extraction, borrow pit, topsoil removal, storage areas	FP*	FR*						I*
Petroleum tank farm		FR*						I*
Radio & Television Tower	FP*	FR*	R1*	R2*	LR*	GB*	AB*	I*
Slaughterhouse		FR*				GB*		I*
Truck freight terminal						GB*		I*

**PRIMARY USE****DISTRICTS IN WHICH PERMITTED**

	FP	FR	R1	R2	LR	GB	AB	I
<b><u>PUBLIC FACILITIES</u></b>								
Airport or heliport		FR*	R1*	R2*	LR*			I*
Church or temple		FR	R1	R2	LR	GB	AB	
Kindergarten or day nursery	FP	FR	R1	R2	LR	GB	AB	I
Municipal or government building		FR	R1	R2	LR	GB	AB	I
Penal or correctional institution		FR*		R2*				I*
Police station or fire station		FR*	R1*	R2*	LR*	GB*		I*
Public art gallery, library or museum		FR	R1	R2	LR	GB	AB	
Public park or recreational facility - boat docks	FP	FR	R1	R2	LR	GB	AB	I
Public or commercial sanitary fill, refuse dump, or garbage disposal plant		FR*		R2*				I*
Public or commercial water supply or sewage disposal plant	FP*	FR*	R1*	R2*	LR*	GB*	AB*	I*
Public/Employee parking area	FP*	FR*	R1*	R2*	LR*	GB*	AB*	I*
Railroad right-of-way and necessary uses	FP*	FR *	R1*	R2*	LR*	GB*	AB*	I*
Recycling Facility	FP*	FR*	R1*	R2*	LR*	GB*	AB*	I*
School, public or parochial		FR	R1	R2	LR		AB	
Solid waste convenience station	FP*	FR*	R1*	R2*		GB*	AB*	I*
Solid waste transfer station		FR*		R2*				I*
Telephone exchange or public utility substation	FP*	FR*	R1*	R2*	LR*	GB*	AB*	I*
Trade or business school						GB		I
Transmission line for gas, oil, electricity, or other utilities	FP*	FR*	R1*	R2*	LR*	GB*	AB*	I*
University or college		FR	R1	R2	LR	GB	AB	
Wireless Communication Facilities	FP*	FR*	R1*	R2*	LR*	GB*	AB*	I*
<b><u>BUSINESS USES: APPLIANCES</u></b>								
Electrical appliance sales & service						GB		I**
Radio-TV service and sales						GB		I**
Other similar uses						GB		I**

**PRIMARY USE****DISTRICTS IN WHICH PERMITTED**

	FP	FR	R1	R2	LR	GB	AB	I
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**BUSINESS USES: AUTOMOTIVE SALES**

Automobile sales room						GB		**
Automobile or trailer sales area, open						GB		**
Automobile repair (all indoors)						GB		**
Filling or service station						GB	AB	**
Public garage						GB		**
Public parking area						GB	AB	**
Other similar uses						GB		**

**BUSINESS USES: CLOTHING SERVICES**

Dressmaking shop						GB		**
Dry cleaning establishment (1)						GB		**
Laundry agency						GB	AB	**
Millinery shop						GB		**
Self-service laundry						GB	AB	**
Shoe repair shop						GB	AB	**
Tailor and pressing shop						GB		**
Other similar uses						GB		**

**BUSINESS USES: FOOD SALES AND SERVICES**

Bakery						GB		**
Dairy						GB		**
Delicatessen						GB	AB	**
Grocery						GB	AB	**
Locker, cold storage, for individual use						GB		**
Meat market						GB	AB	**
Restaurant						GB	AB	**
Roadside sales stand – agricultural products	FP	FR	R1			GB		**
Supermarket						GB		**
Wholesale produce terminal						GB*		*
Other similar uses						GB*		**

**BUSINESS USES: GENERAL BUSINESS**

Bank						GB		**
Business or professional office						GB	AB	**



**PRIMARY USE****DISTRICTS IN WHICH PERMITTED**

	FP	FR	R1	R2	LR	GB	AB	I
Postal station						GB		**
Telegraph office						GB		**
Other similar uses						GB		**

**BUSINESS USES: PERSONAL SERVICES**

Barber shop						GB	AB	**
Beauty shop						GB	AB	**
One operator barber or beauty shop			R1*	R2*				
Reducing salon						GB		**
Other similar uses						GB		**

**BUSINESS USES: RECREATION**

Billiard room (3)						GB		**
Bowling alley (3)						GB		**
Country club or golf course	FP*	FR*	R1*	R2*	LR*			*
Dancing academy (3)						GB		**
Lodge or private club		FR	R2		LR	GB		**
Night club (3)						GB		**
Private recreational development	FP*	FR*	R1*	R2*	LR*	GB*	AB*	
Public camp		FR*		R2*	LR*			
Riding stable		FR*		R2*	LR*	GB*	AB*	*
Seasonal hunting or fishing lodge	FP*	FR*	R1*	R2*	LR*	GB*		*
Stadium or coliseum		FR*	R1*	R2*		GB		*
Tavern (3)						GB		**
Theatre, indoor (3)						GB		**
Theatre, outdoor		FR*		R2*		GB*		*
Other business uses similar to those footnoted (3)						GB		**

**BUSINESS USES: RETAIL SALES**

Apparel						GB		**
Department store						GB		**
Drugstore						GB	AB	**
Flower shop (2)						GB	AB	**
Gift Shop						GB	AB	**
Hardware store						GB		**
Jewelry store						GB		**

**PRIMARY USE****DISTRICTS IN WHICH PERMITTED**

	FP	FR	R1	R2	LR	GB	AB	I
News Dealer						GB	AB	**
Record shop						GB		**
Retail showroom						GB		**
Stationer						GB		**
Variety store						GB		**
Other similar uses						GB		**

**BUSINESS USES: MISCELLANEOUS**

Advertising sign or billboard						GB	AB	**
Art gallery		FR	R1	R2	LR	GB	AB	
Bait sales	FP*	FR*	R1*	R2*	LR*	GB	AB	
Bed and Breakfast (8)		FR*	R1*	R2*	LR*	GB	AB	
Boat sales, service and storage						GB	AB	**
Cemetery or crematory		FR*	R1*	R2*	LR*			
Clinic		FR*	R1*	R2*	LR*	GB	AB	*
Commercial facility for breeding and raising non-farm fowl or animals		FR*				GB*		
Farm equipment, sales and service						GB		**
Flea market (see section 5.1)	FP*					GB*		
Home occupation (5)	FP	FR	R1	R2		GB*	AB	I
Home Stay (6)		FR	R1	R2	LR	GB	AB	
Hospital		FR*	R1*	R2*	LR*	GB*		
Hotel or Motel		FR*	R1*			GB	AB	**
Kennel		FR*				GB		**
Mobile home park		FR*	R1*	R2*		GB*		
Mortuary			R1*	R2		GB		
Noncommercial signs	FP	FR	R1	R2	LR	GB	AB	I
On-premise commercial message signs	FP	FR	R1	R2	LR	GB	AB	I
Photographic studio						GB		**
Planned unit development (4)	FP	FR	R1	R2	LR	GB	AB	I
Professional office		FR*	R1*	R2*				
Railway station or motor bus station						GB		**
Retail business not otherwise covered						GB		**
Sales barn for livestock resale				R2*		GB		I
Tourist home		FR*	R1*	R2*	LR*	GB	AB	
Travel trailer park		FR*			LR*	GB*		
Veterinary hospital for small animals						GB		*
Warehouse		FR*	R1*	R2*		GB		I
Wholesale business						GB		**

## Footnotes

1. Only if it contains not more than 2 clothes-cleaning units, neither of which has a rated capacity of more than 40 pounds, and only if it uses non-explosive and non-flammable cleaning fluid.
  2. Including greenhouse not larger than 1000 square feet in area.
  3. Only if conducted in noise-proof building.
  4. Only if Planned Unit Development procedures are followed as outlined in the Brown County Subdivision Ordinance.
  5. Special Exception may or may not be required. See CHAPTER 5 - SPECIAL PROVISIONS Section 5.2 Home Occupations.
  6. Home stay uses are subject to the home occupation regulations set forth in Chapter 5, section 2 of the Ordinance.
  7. Regardless of zone, tourist homes shall comply with all relevant life, health and safety codes as a condition of improvement location permit issuance.
  6. Home stay uses are subject to the home occupation regulations set forth in Chapter 5, section 2 of the Ordinance.
  7. Regardless of zone, tourist homes shall comply with all relevant life, health and safety codes as a condition of improvement location permit issuance.
  8. In addition to other reasonable conditions, the approval of a bed and breakfast establishment special exception shall be conditioned on continuing compliance with all relevant state health (I.C. Title 16, Article 41) and building code provisions. Regardless of zone, bed and breakfast establishments shall comply with all relevant life, health and safety codes as a condition of improvement location permit issuance.
- B. In Floodway Fringe (FF) Districts, the following uses are authorized. All facilities, structures, uses and buildings consistent with other provisions of this ordinance may be constructed in this district provided that the flood protection grade for all buildings shall be at least two feet above the regulatory flood profile.

### 3.4 SPECIAL EXCEPTIONS

- A. The Board may grant a special exception for a use in a district, if after a hearing under Section 7.2 it finds that:
1. Section 3.1 authorizes a special exception for that use in that district;
  2. the requirements for special exceptions prescribed by this ordinance will be met; and,
  3. granting the exception will not subvert the general purposes served by this ordinance and will not materially and permanently injure other property or uses in the same district and vicinity.

In order to inform the public and to promote consistency and fairness, the Board may adopt standard guidelines and conditions for its use in determining whether a proposed special exception will subvert the general purposes served by this ordinance or will materially and permanently injure other property or uses in the same district and vicinity. A violation of a condition of special exception approval shall constitute a violation of the Ordinance which may be remedied in any manner authorized by this Ordinance or by statute.

- B. The granting of a special exception under subsection (a) is unnecessary for a use authorized by Section 3.1, if the use exists on the date this ordinance is passed. However, this subsection does not extend to the expansion of such a use, if it involves the enlargement of a building, structure or land area.
- C. To be eligible for the granting of a special exception under this section, a person must apply for an improvement location permit under Section 6.I. The Planning Coordinator shall send each such application to the Board of Zoning Appeals for action under item (a) above. If the Board grants the special exception, it shall direct the Planning Coordinator to issue the improvement location permit for the special exception.
- D. Construction of improvements shall begin within one year of the date of approval and completed within one year of the date construction began. However, the Commission may extend the completion date for one year provided the petitioner has made timely application to the Board for such an extension and that good cause is shown why it should be granted.
- E. Upon abandonment of a development authorized (abandonment shall be deemed to have occurred when no improvements have been made pursuant to the terms of the special exception approval for twelve consecutive months) or upon the expiration of an extension granted by the Board, the permission previously conferred for the development shall be deemed withdrawn and of no force or effect whatever.

### 3.5 FLOOD PLAIN (FP) AND FLOODWAY (FW) USES-BY SPECIAL EXCEPTION

- A. In Flood Plain (FP) Districts the following uses may be permitted by special exception but only after a proper permit or letter of recommendation for same has been granted by Natural Resources. All terms and conditions imposed by Natural Resources shall be

incorporated in any permit issued by the Planning Coordinator. However, the Board of Zoning Appeals may impose greater restrictions than those issued by Natural Resources. All buildings or additions to existing buildings shall have flood protection grades at least two feet above the regulatory flood profile.

1. Water management and use facilities, such as dams, docks, dolphins, channel improvements, dikes, jetties, groins, marinas, piers, wharves, levees, seawall, floodwalls, weirs, and irrigation facilities,
2. Transportation facilities, such as streets, bridges, roadways, fords, airports, pipelines, railroads, and utility transmission facilities.
3. Temporary or seasonal flood plain occupancy, such as circus sites, fair sites, carnival sites, boat ramps, camps, roadside stands, and transient amusement facility sites.
4. Water-related urban uses, such as wastewater treatment facilities, storm sewers, electric generating and transmission facilities, and water treatment facilities.
5. Other flood tolerant or open space urban uses, such as flood proofed buildings, racetracks, tennis courts, park buildings, outdoor theater, fills, truck freight terminals, radio or TV towers, parking lots, and mineral extractions.
6. Mobile homes (temporary or permanent) having pads (concrete or stands of compacted fill) at or above the regulatory flood elevation and ground anchors meeting Mobile Home Tie Downs; Schedule A. (Permitted in FF Districts only).
7. Residential structures (only in Flood Fringe areas).

B. In Flood Way (FW) Districts, the following special exception uses may be permitted only after a permit for construction in a floodway has been granted by Natural Resources. All terms and conditions imposed by Natural Resources shall be incorporated in any permit issued by the Planning Coordinator. However, the Board of Zoning Appeals may impose greater restrictions than those issued by the Natural Resources. All buildings or additions to existing buildings shall have flood protection grades at least two feet above the regulatory flood profile.

1. Water management and use facilities, such as dams, docks, dolphins, channel improvements, dikes, jetties, groins, marinas, piers, wharves, levees, seawalls, floodwalls, weirs and irrigation facilities.
2. Transportation facilities, such as streets, bridges, roadways, fords, airports, pipe lines, railroads and utility transmission facilities.
3. Temporary or seasonal flood plain occupancy, such as circus sites, fair sites, carnival sites, boat ramps, camps, roadside stands and transient, amusement facility sites.
4. Water related urban areas, such as wastewater treatment facilities, storm sewers, electrical generating and transmission facilities and water treatment facilities,

5. Other flood tolerant or open space urban uses, such as flood proofed industrial and commercial buildings, race tracks, tennis courts, park buildings, outdoor theaters, fills, truck freight terminals, radio or TV towers, parking lots and mineral extraction.

### 3.6 VARIANCES

- A. The Board may grant a variance with respect to specific property, if after a hearing under Section 7.2 of the Brown County Zoning Ordinance, it finds that:
  1. There are special circumstances relating to the property that do not generally affect other property or other uses of the same kind in the same district and vicinity.
  2. The special circumstances create hardship in that, if the variance is not granted, a substantial property right that is enjoyed by other properties in that district and vicinity cannot be enjoyed.
  3. The granting of the variance will not be materially detrimental to the public welfare or materially injurious to other property or uses in that district and vicinity.
- B. Variances issued for Floodway (FW), Flood Fringe (FF) or Flood Plain (FP) Districts shall be subject to the following additional restrictions:
  1. No variance for a residential use in a Floodway (FW) District shall be granted.
  2. No variance for a Floodway (FW) District shall be granted until a permit has been obtained from Natural Resources,
  3. Variances to the flood protection grade requirements in a Floodway Fringe (FF) District may be granted only when a new structure is to be located on a lot of one-half acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the flood protection elevation.
  4. No variance for a Flood Plain (FP) District shall be granted until permit or letter of recommendation is issued by Natural Resources. If a letter of recommendation is issued by Natural Resources, the Board may apply the standards in (b).(3) of this section.
  5. A variance may be granted for the reconstruction or restoration of any structure listed on the National Register of Historic Places of the Indiana State Survey of Historic, Architectural, Archaeological and Cultural Sites, Structures, Districts and Objects.
  6. Variances shall give only the minimum relief necessary and only upon a showing of good and sufficient cause by the applicant.
  7. The Board shall issue a notice to the recipient that the proposed land use change may be subject to increased risk of property loss and could require exceedingly high flood insurance premiums.

Placement of mobile homes in a floodway is prohibited except in the case of an existing mobile home park or subdivision.

- C. Any construction made possible by the granting of the variance must be completed within one year of the date of approval. However, the Board may extend the completion date for one year provided the petitioner has made timely application to the Board for such an extension and that good cause is shown why it should be granted. The approval of the variance by the Board for any construction which has not been completed within one year (two years if an extension is granted) shall be deemed withdrawn and of no force or effect whatever.

### 3.7 NON-CONFORMING USES

- A. A use that exists on the date on which this ordinance or an amendment to it is passed may, if otherwise lawful, be continued, and a more restricted use may be substituted for it, even though that use or the more restricted use does not conform to the ordinance or amendment. Such a use may be extended to other parts of the same building, if the extension involves no structural changes other than those required by law.
- B. A use otherwise covered by subsection (a) may not be carried on in a building that is erected after the use becomes a non-conforming use. However, a use designated for a building for which a building permit is issued before this ordinance or an amendment to it is passed may, if otherwise lawful, be carried on even though it does not conform to the ordinance or amendment, but only if:
1. Construction is diligently carried on before the expiration of 90 days after the date of the permit; and
  2. The building is completed according to the filed plans before the expiration of 3 years after the date the ordinance or amendment, as the case may be, is passed.
- C. A use covered by subsection (a) or (b) ceases to be authorized if:
1. It is discontinued for a 6-month period during which it is succeeded by no other non-conforming use; or
  2. It is an open use and 5 years have elapsed since the date the ordinance or amendment, as the case may be, was passed.
- D. A use otherwise covered by subsection (a) or (b) may not be carried on in a building that is damaged, by more than one and one-half times its current assessed value, by fire, explosion, act of God, or the public enemy.

### 3.8 NON-CONFORMING USES: FLOOD PLAIN (FP), FLOOD WAY (FW), AND FLOOD FRINGE (FF)

Any building, structure or other use in a FP, FW or FF District, which is not in accordance with this ordinance constitutes a non-conforming use.

1. In a Floodway (FW) District, no non-conforming use may be expanded or enlarged nor can a building undergo substantial modification without a permit for construction in a floodway from Natural Resources.

2. A non-conforming use in a Floodway Fringe (FF) or Flood Plain (FP) District may be altered, enlarged, or extended on a one-time-only basis, provided the procedures set forth in this ordinance with respect to new construction in such Districts are followed and further provided such alterations, enlargements, or extensions do not increase the value of the building or other use (excluding the value of land) by more than forty (40) percent of its pre-improvement market value, unless such building, structure or use is permanently changed to a conforming use.
3. Any non-conforming use in the FP, FW and FF Districts, which is damaged by flood, fire, explosion, Act of God, or the public enemy may be restored to its original dimensions and conditions, provided the damage does not reduce the value of the buildings, excluding the value of the land by more than forty (40) percent of its pre-damage value.

### 3.9 ADDITIONAL RESIDENTIAL STRUCTURE FOR MEDICAL NECESSITY

- A. A person may, with a special exception, and under the following circumstances, locate on the same lot or parcel where one residential structure currently exists, without the necessity of the subdivision of said lot or parcel, a mobile home for the purpose of caring for a sick or disabled family member of the applicant, whether or not such person currently resides in the existing structure, or intends to occupy the added structure, provided that the applicant present to the Area Plan Commission and the Board of Zoning Appeals a physician's statement specifically setting forth the nature of the disability or sickness, the probable duration thereof, and the physician's opinion that full-time care is necessary to assure the health and safety of the person alleged to be sick or disabled, and provided further that:
  1. The mobile home so located is incidental or secondary to the currently existing residential structure (hereinafter referred to as "primary structure").
  2. The "family member" and the person or persons to be caring for said family member are related and no further removed than a parent, child, grandparent, great-grandparent, aunt, uncle, brother, or sister.
  3. There are no residential structures other than the primary structure existing on the lot or parcel.
  4. The primary structure is a single-family dwelling.
  5. The mobile home so located remains temporary, and no permanent or immobile structures are attached to it.
  6. The addition of the mobile home on the lot or parcel will not create or add to unsanitary conditions.
  7. The allowing of the mobile home shall not materially change the character of the zoning district and vicinity, materially lower the market value of adjacent property, or materially increase congestion in the streets.



- B. Once an Improvement Location Permit has been issued under this Section, the mobile home and the person or persons to be occupying said mobile home must be moved in no later than 60 days from the date of the issuance of said Permit, or said Permit shall automatically expire.
- C. An Improvement Location Permit issued under this Section shall be valid for one year from the date of issuance. The Permit may be renewed annually for an additional one year, provided that the holder thereof presents to the Plan Director an up-to-date physician's statement addressed to and satisfying the requirement set forth in Paragraph A above
- D. An Improvement Location Permit issued pursuant to this Section, if renewed, may be renewed annually for two years only; should a third renewal be desired, the applicant must again appear before the Area Plan Commission and the Board of Zoning Appeals and show his entitlement thereto in the same manner as if this was an initial request. Before appearing, the applicant must again publish notice in the newspaper and circulate certified letters in the same manner as is required by this Ordinance for special exceptions.
- E. If at anytime prior to the expiration of the term of the Permit the situation regarding the sick or disabled family member should change to the point that full-time care is no longer necessary, the applicant shall report that fact immediately to the Plan Director, and the Permit previously issued shall be withdrawn, and the mobile home shall be removed no later than 60 days thereafter. Should the applicant fail or refuse to either report such a change as aforesaid, or remove the mobile home within the allotted time, the Plan Commission may, in addition to all other remedies available to it, assess a fine in the sum of \$15.00 per day, and may also forever bar the applicant from again receiving an Improvement Location Permit under this Section of the Ordinance.

That Chapter 3 of said Zoning Ordinance be amended to reflect that additional residential structures for medical necessity shall be allowed by special exception only, and in any zoning district except FP.

## CHAPTER 4 – USE REQUIREMENTS

### 4.1 HEIGHT OF STRUCTURES

- A. Except as otherwise provided by this section, no structure may be erected or changed so as to make its height greater than 25 feet if it is in an LR District, 35 feet if it is in an FR, R1, R2, GB, or AB District, or 75 feet if it is in an I District.
- B. A clinic that is authorized as a special exception under Section 3.3 may be erected or changed to a height not greater than 45 feet or the height prescribed for the district by subsection (a), whichever is the greater. A hospital that is authorized as a special exception under Section 3.3 may be erected or changed to a height not greater than 70 feet or the height prescribed for the district by subsection (a), whichever is the greater.
- C. In a GB District, a light industrial structure may be erected or changed to a height not greater than 75 feet. In an I District, an industrial structure may be erected or changed to any height.
- D. An agricultural structure may be erected or changed to any height necessary for its operation.
- E. In an FR, R1, or LR District, a multi-family structure may be erected or changed to a height not greater than 25 feet. However, up to a maximum of 35 feet, its height may exceed 25 feet by 1 foot for each foot that the side yards exceed those prescribed by this ordinance.
- F. The height of a business structure may exceed the height otherwise prescribed for it by this ordinance by 2 feet for each foot that the front and rear setbacks exceed the setbacks prescribed by this ordinance.
- G. Spires, church steeples, chimneys, cooling towers, elevator bulkheads, fire towers, scenery lofts, penthouses, stacks, tanks, water towers, transmission towers, and necessary mechanical appurtenances may be erected or changed to any height that is not otherwise prohibited.

### 4.2 MAXIMUM LOT COVERAGE: RESIDENTIAL USES

The residential buildings on a lot may not exceed in coverage the following percentages of total lot area:

	<u>DISTRICT</u>					
	FR	R1	R2	LR	GB	AB
Percentage of Coverage	10	30	30	30	25	25

#### 4.3 MINIMUM FLOOR AREA: RESIDENTIAL USES

No dwelling may be erected or changed so that its ground floor size, in square feet, is less than that prescribed by the following table:

<u>Kind of Dwelling:</u>	<u>DISTRICT</u>					
	FR	R1	R2	LR	GB	AB
A. <u>One-Story Dwellings:</u>						
1. Single-Family	600	900	600	600	600	600
2. Two-family			1200	1200	1200	1200
3. Multi-Family (Same as two-family plus 400 sq. ft. per dwelling unit)						
B. <u>More than One-Story Dwellings:</u>						
1. Single-Family	600	800	600	600	600	600
2. Two-Family			1200		1000	1000
3. Multi-Family (Same as two-family plus 400 sq. ft. per dwelling unit)						

#### 4.4 MINIMUM LOT SIZES: RESIDENTIAL USES

A. A lot on which a dwelling is erected or changed may not be smaller in area, in square feet per dwelling unit, exclusive of any portion of the lot which is under a body of water - using the high water mark to delineate its outer edge, than that prescribed for it by the following table:

<u>KIND OF DWELLING:</u>	<u>ACREAGE PER DWELLING UNIT DISTRICT</u>					
	FR	R1	R2	LR	GB	AB
Single-Family with Community Sewage disposal System	2	1	1	.16	.16	.16
Single-Family with Individual Sewage Disposal System	5	2	2	.50	.50	.50
Two-Family with Community Sewage Disposal System	1	.50	.50		.10	.10
Two-Family with Individual Sewage disposal System	5	1	1		.25	.25
Multi-Family with Community Sewage disposal System		.50	.50		.10	.10
Multi-family with Individual Sewage disposal System		1	1		.25	.25

- B. A lot on which a dwelling is erected or changed may not be smaller in width, in linear feet, than prescribed for it by the following table:

<u>KIND OF DWELLING:</u>	<u>DISTRICT</u>					
	FR	R1	R2	LR	GB	AB
Single-Family	300	80	100	60*	60	60
Two-family	300	100	100		70	70
Multi-Family		120	150		80	80

\* 150 feet, if an individual sewage disposal is used.

- C. A Single-family dwelling may be located on any lot in any District in which single-family dwellings are permitted, if the lot was in single ownership or included in a subdivision which was on record in the office of the County Recorder at the time of passage of this ordinance, even though the lot does not have the minimum lot width or the minimum lot area, or both, specified for the District.

#### 4.5 MINIMUM LOT SIZE: USES REQUIRING SPECIAL EXCEPTIONS

A lot on which one of the following uses is located may not be smaller in area than the area prescribed for that use opposite it in the following table:

<u>USE</u>	<u>MINIMUM LOT AREA</u>
Airport	80 acres
Cemetery or crematory	10 acres
Clinic	15,000 sq. ft.
Commercial facilities for raising and breeding non-farm fowl and animals	5 acres
Commercial greenhouse	25,000 sq. ft.
Heliport	1 acre
Home Occupation	*
Hospital	5 acres
Industry, light (FP)	4 acres with 200 feet lot width
Industrial Park	15 acres
Junk yard	10 acres
Kindergarten or day nursery	110 sq. ft per child
Mobile home park, or travel trailer park	5 acres (Minimum area per unit: 2500 sq. ft.)
Penal or correctional institution	320 acres
Police station or fire station	20,000 sq. ft.
Public camp	5 acres
Public or commercial dump, or garbage disposal plant	5 acres
Public or commercial sanitary fill, refuse dump	10 acres
Public or employee parking lot	1,500 sq. ft.
Recycling facility	.75 acre

<u>USE</u>	<u>MINIMUM LOT AREA</u>
Riding stable	20,000 sq ft. plus 5,000 sq. ft., for every horse over four
Seasonal fishing or hunting lodge	*
Solid waste convenience station	.75 acre
Solid waste transfer station	5 acre for FR and 2 acres for R2
Stadium or coliseum	5 acres
Tourist home	*
Wholesale produce terminal	15 acres
* The requirements of the district in which the use is located apply to the use.	

#### 4.6 STANDARD SETBACKS

- A. The minimum distance between the front line of a building and the centerline of:

State Road 46 is 110 feet.  
State Road 135 and State Road 45 is 75 feet.  
All other roads, including private roads, is 50 feet.

However, if in a residence or business district 25 per cent of the lots in a block are occupied by buildings, the minimum setback for the block is the average setbacks of those buildings. A through lot has a setback on each abutting street.

- B. The minimum depth of rear yard for a residential use is 15 feet in a GB, or AB District and 25 feet in any other district in which the use is permitted. The minimum depth of rear yard for a business or industrial use is 15 feet, except for service to water areas by business uses permitted in an AB District. One half of an alley abutting the rear of a lot may be counted as part of the rear yard.
- C. The minimum side yard for a residential use is 5 feet in a GB, or AB District and 10 feet in any other district in which the use is permitted. The minimum aggregate width of both side yards for a residential use is 15 feet in a GB, or AB District and 25 feet in any other district in which the use is permitted.
- D. Except where a business district adjoins a residence district, there is no minimum side yard for a business use. Where a business district is separated from an adjoining residence district by a street, the minimum side yard is 5 feet. Where the two districts adjoin within the same block, the minimum side yard is 10 feet.
- E. Except where an industrial use adjoins a residence district, a side yard need not be provided for an industrial use. However, if a side yard is provided, it must be at least 6 feet. Where the use adjoins a residence district, the minimum side yard is 30 feet.

#### 4.7 STANDARD SETBACKS

- A. In a residential district, an accessory building may be located no closer to a side lot line than 3 feet and no closer than the minimum front setback requirement allowed in 4.6 (a).

- B. If an interior lot abuts a corner lot or an alley separating them and the front yards of the two lots are perpendicular to each other, an accessory building on the rear lot line of the corner lot may be located no closer to the street abutting the interior lot than the principal building on the interior lot. However, for each foot that the accessory building is located away from the rear lot line of the corner lot the accessory building may be 4 inches closer to the street, but no closer than 5 feet.

#### 4.8 SETBACKS: VISION CLEARANCE AT INTERSECTIONS

At the intersection corner of each corner lot, the triangular space determined by the two lot lines at that corner and by a diagonal line connecting the two points on those lot lines that are 15 feet respectively from the corner shall be kept free of any obstruction to vision between the heights of 2-1/2 and 13 feet above the elevation of the traveled area.

#### 4.9 SETBACKS: USES REQUIRING SPECIAL EXCEPTIONS

- A. The following uses are subject to the special setbacks prescribed, in feet, by the following table. If no figure appears for a front yard setback, the standard setback prescribed by Section 4.6(a) applies.

<u>USE</u>	<u>FRONT</u>	<u>SIDE</u>	<u>REAR</u>
Bottled gas storage and distribution	300	300	300
Cemetery or crematory		50	50
Clinic		10	30
Commercial greenhouse	100	40	40
Commercial facilities for raising, and breeding non-farm fowl and animals	100	100	100
Hospital	100	40	40
Industrial park	100	75 (abutting residential use)	
Kindergarten or day nursery		20	15
Liquid fertilizer storage and distribution	300	300	300
Mineral extraction, borrow pit, or topsoil removal, and their storage areas	150	150	150
Mobile home park or travel trailer park	100	40	40
Outdoor theatre	100	40	40
Penal or correctional institution	100	100	100
Petroleum tank farm	300	300	300
Private recreation development		40	40
Public camp	100	40	40
Public or commercial sanitary fill, refuse, dump, or garbage disposal plant	300	300	300
Public or commercial sewage disposal plant	300	300	300
Recycling facility	standard setback	standard setback	standard setback
Riding stable	100	100	100
Sales barn for livestock resale	300	300	300
Slaughterhouse	200	200	200

<u>USE</u>	<u>FRONT</u>	<u>SIDE</u>	<u>REAR</u>
Solid waste convenience station	standard setback	standard setback	standard setback
Solid waste transfer station	300	300	300
Stadium or coliseum		50	50
Wholesale produce terminal	100	75 (abutting residential use) 35 (abutting other use)	

- B. Buildings associated with the following uses may be located no closer to interior roads than the distances, in feet, respectively prescribed by the following tables.

<u>USE</u>	<u>SETBACK</u>
Country club or golf course	85
Industrial park	85
Mobile home park	50
Public camp	40
Wholesale produce terminal	85

#### 4.10 BUFFERING: MINIMUM DISTANCES FROM RESIDENTIAL DISTRICT OR USE

- A. Mineral extraction area, borrow pit, or topsoil removal area (including storage area), penal or correctional institution, public or commercial sewage disposal plant, sales barn for livestock resale, truck freight terminal, or wholesale produce terminal may not be located closer to an R1, R2, or LR District than 300 feet. A junk yard may not be located closer to such a district or a state highway than 1320 feet.
- B. A parking area or loading berth for any of the following uses may not be located closer to a residential use than the distance, in feet, listed opposite it in the following table:

<u>Use</u>	<u>Parking Area</u>	<u>Loading Berth</u>
Airport or heliport	25	100
Clinic	10	
Commercial facilities for raising and breeding non-farm fowl and animals	25	100
Commercial greenhouse		50
Country club or golf course	10	
Hospital	25	50
Industrial park	25	100
Junk yard	1320	1320
Mineral extraction, borrow pit, or topsoil removal, and their storage areas		300
Mobile home park , or travel trailer park	25	
Penal or correctional institution	300	300
Police station or fire station	10	
Private recreational development	25	

<u>USE</u>	<u>PARKING AREA</u>	<u>LOADING BERTH</u>
Public camp	25	
Sales barn for livestock resale	50	100
Shopping center	25	50
Slaughterhouse	25	100
Stadium or coliseum	25	50
Truck freight terminal	100	100
Wholesale produce terminal	100	100

#### 4.11 ENTRANCES

- A. This subsection limits the number of entrances to an arterial street or numbered highway. However, it does not apply to entrances for emergency use only.
- B. Each of the following uses, for which special exceptions are prescribed by Section 3.1, is limited to 1 entrance:

- Airport or heliport
- Artificial lake of 3 or more acres
- Cemetery or crematory
- Clinic
- Commercial facility for raising and breeding non-farm fowl and animals
- Commercial greenhouse
- Country club or golf course
- Industrial park
- Junk yard
- Kindergarten or day nursery
- Mineral extraction, borrow pit, topsoil removal, and their storage areas
- Mobile home park or travel trailer park
- Outdoor theatre
- Penal or correctional institution
- Private recreational development
- Public camp
- Public or commercial sanitary fill or refuse dump or garbage disposal plant
- Public or commercial sewage disposal plant
- Public or employee parking area
- Radio or television tower
- Railroad right-of-way and uses essential to railroad operation
- Riding stable
- Sales barn for livestock resale
- Telephone exchange or public utility substation
- Tourist home
- Truck freight terminal
- Wholesale produce terminal



- C. The following use, for which a special exception is prescribed by Section 3.1, is limited to 2 entrances:

Recycling facility  
Solid waste convenience station  
Solid waste transfer station  
Stadium or coliseum

- D. As used in this section, the term "entrance means a passageway from premises to thoroughfare by which vehicles enter or leave.

#### 4.12 PARKING

- A. To reduce traffic problems and hazards by eliminating unnecessary on-street parking, every use of land must include on-premises parking sufficient for the needs normally generated by the use, as provided by this section. Parking spaces or bays contiguous to the street, required by subdivision or other ordinances, are in addition to and not in place of the spaces so required.

- B. As used in this section, the term:

**parking space** - means an area, not including any part of a street or an alley, designed or used for the temporary parking of a motor vehicle;

**parking area** - means a group of parking spaces, or an open area not including any part of a street or an alley, designed or used for the temporary parking of motor vehicles.

- C. Parking spaces shall be provided as follows:

<u>Use</u>	<u>Required Parking Spaces</u>
Airport or heliport	1 per 2 employees plus 1 per 4 public seats
Artificial lake of 3 acres or more	1 per 2 users
Automobile or trailer sales area	1 per 1,000 sq. ft. used for retailing
Automobile sales and repair (indoor)	1 per 200 sq. ft. floor area
Banks, business offices, professional offices, similar business uses, postal stations, telegraph offices, and similar service uses	1 per 500 sq. ft. floor area
Boarding or lodging house or fraternity, sorority, or student cooperative house	1 per 3 occupants
Bowling alley	3 per lane, plus 1 per 6 spectator seats
Business uses in AB Districts (see Section 3.1)	As determined by the Board to be in line with comparable uses.
Business uses not otherwise listed	As determined by the Board
Cemetery or crematory	1 per 2 employees, plus 1 per 4 public seats
Church or temple	1 per 4 seats in main auditorium

USERequired Parking Spaces

Clinic	1 per 2 employees, plus 3 per doctor or dentist
College, university, or trade or business school	1 per 3 students or staff members
Country club or golf course	1 per 2 employees, plus 3 per golf hole
Dancing academy	1 per 200 sq. ft. of floor area
Department store, retail showrooms, apparel shop, flower shop, drugstore, hardware store, stationer, news-dealer, record shop, photo studio, barber shop, beauty shop, reducing salon, restaurant, delicatessen, bakery, grocery, meat market, supermarket, cold-storage locker service (individual), roadside sales stand, electrical appliance shop, radio-TV shop, dressmaker, millinery, tailor and pressing shop, shoe repair, dry cleaning shop, self-service laundry, laundry agency, billiard room, tavern, night club, and similar business uses	1 per 125 sq. ft. of sales floor area
Fishing or hunting lodge (seasonal)	1
Greenhouse (commercial), facilities for raising or breeding non-farm fowl or animals, (commercial), sales barn for livestock	1 per 3 employees plus 1 per 125 sq. ft. of sales area
Home occupation	1 in addition to residence requirement
Home professional office	2 in addition to residence requirement
Hospital	1 per 4 beds, plus 1 per doctor, plus 1 per 3 employees, plus 1 per hospital vehicle
Hotel	1 per 3 employees, plus 1 per 2 sleeping rooms
Industrial park	1 per 2 employees on largest shift
Industrial uses generally	1 per 3 employees
Junk yard	1 per 2 employees
Kindergarten or day nursery	1 per 2 employees, plus 1 per 5 children
Mobile home park or travel trailer park	1 per 2 employees plus 1 per mobile home stand
Mortuary	1 per 6 seats in main auditorium
Motel	1 per sleeping room
Nursing home or home for aged	1 per 7 persons
Penal or correctional institution	1 per 3 employees, plus 1 per 10 inmates (capacity)
Police station or fire station	1 per 3 employees on shift
Private club or lodge	1 per 6 active members
Private recreational development	1 per 2 customers or members
Public camp	1 per camp site plus 1 per cabin
Public library, art gallery, museum, or municipal or governmental building	1 per 125 sq. ft. ground floor area of buildings

USERequired Parking Space

Public or commercial sewage disposal plant	1 per employee per shift
Radio or TV tower	1 per employee per shift
Railway right-of-way, railroad operational use	1 per 2 employees where headquartered
Railway station or motor bus station	1 per 10 seats in waiting room, plus 1 per 2 employees of connected retail use
Recycling facility	1 per employee per shift plus 3 public
Residential use, including farm tenant housing and farm seasonal worker housing	1½ per dwelling unit
Riding stable	1 per 5,000 sq ft.
School - elementary	1 per staff member
School - high	1 per 3 staff members, plus 1 per 6 auditorium seats
Solid waste convenience station	1 per employee per shift plus 3 public
Solid waste transfer station	1 per employee per shift plus 3 public
Stadium or coliseum	3 per 4 employees plus 1 per 4 seats
Telephone exchange or public utility substation	1 per employee
Theatre (indoor)	1 per 6 seats
Theatre (outdoor)	1 per 2 employees
Tourist home	1 per employee, plus 1 per sleeping accommodation
Truck freight terminal	1 per 2 employees plus 4 for customers
Veterinary hospital for small animals or kennel	1 per 3 animal spaces (cages or pens)
Wholesale produce terminal	1 per 2 employees

- D. Each of the parking spaces required by this section must be at least 9 feet wide and 20 feet long, exclusive of passageways.
- E. The parking spaces prescribed by this section for a business or an industrial use must be located on the premises or on a site, approved by the Board, at least part of which is within 300 feet of the premises. However, parking spaces may not be located in the required front yard, except in GB and I Districts.
- F. Some parking areas must conform to the location requirements prescribed in Section 4.10. In addition, a parking area for a business use must, if in the open, be paved with a hard or dustproof surface.
- G. A group of business or industrial uses may provide a joint parking area if the number of spaces in the area at least equals the aggregate of the spaces required for the several uses.
- H. A church or temple that requires a parking area at times when nearby uses do not need their parking facilities may, by agreement approved by the Board, use those facilities instead of providing its own.

- I. Parking requirements may be waived by the Board for uses in a block in which 50 per cent or more of the area is occupied, at the time this ordinance is passed, by business or industrial structures.

#### 4.13 LOADING

- A. Business uses, except those that do not receive or transport goods in quantity by truck delivery, shall be provided with loading berths (which, if open, shall be paved with a hard or dustproof surface), as shown in the following table:

<u>Use</u>	<u>Gross floor area</u>	<u>Berths</u>
Retail stores, department stores, wholesale establishments	3,000 or more but not more than 15,000;	1
Storage uses, and other business uses	each 25,000, or fraction thereof, more than 15,000;	1 additional
Office buildings	10,000 or less;	1
	More than 10,000, but not more than 336,000;	2
	Each 200,000 or fraction thereof, more than 335,000;	1 additional

- B. (1) Each of the following uses for which special exceptions are provided by Section 3.1, and shopping centers shall be provided with loading berths as shown in the following table. Loading berths must not face on the bordering highway and must be at least as far from the nearest residential use as the number of feet shown.

<u>Use</u>	<u>Berths</u>	<u>Distance from Nearest Residential Use (feet)</u>
Commercial facilities for raising and breeding non-farm fowl and animals	1	100
Commercial greenhouse (15,000 sq. ft. or less)	1	50
Commercial greenhouse (over 15,000 sq. ft.)	2	50
Hospital (200 beds or less)	1	50
Hospital (more than 200 beds but not more than 500 beds)	2	50
Hospital (more than 500 beds)	3	50
Industrial park	Same as subsection (c)	100
Junk yard	2	300
Recycling facility	1	100
Riding stable	1	-
Solid waste convenience station	1	100
Solid waste transfer station	2	300
Stadium or coliseum	2	50
Wholesale produce terminal	Per development plan	100

- (2) For the following uses, loading berths, if any, must be at least as far from the nearest residential use as the number of feet respectively shown by the following table:

<u>Use</u>	<u>Distance from Nearest Residential Use (feet)</u>
Airport or heliport	100
Mineral extraction, borrow pit, topsoil removal, and their storage areas	300
Outdoor commercial recreational enterprise	50
Penal or correctional institution	300
Sales barn for livestock resale	100
Truck freight terminal	100

C. Industrial uses shall be provided with loading berths, as shown in the following table:

<u>Gross Floor Area of Industrial Use (Sq. Ft.)</u>	<u>Berths</u>
15,000 or less	1
More than 15,000 but not more than 40,000	2
More than 40,000 but not more than 100,000	3
Each 40,000 or fraction thereof, more than 100,000	1 additional

D. Each loading berth prescribed by this section must provide at least a 12-foot by 45-foot loading space, with a 14-foot height clearance.

F. As used in this section, the term "loading berth" means an off-street, off alley area designed or used to load goods on, or unload goods from, vehicles.

#### 4.14 MISCELLANEOUS RESIDENTIAL RESTRICTIONS

In an R1, R2 or LR District:

1. An accessory building may not be erected before the principal building, except on a farm, and;
2. In the case of a through lot, the area at each end of the lot between the setback line and the middle of the street shall be treated as if it were part of the front yard.

#### 4.15 MISCELLANEOUS SIGN RESTRICTIONS

1. There shall be no internally lit, edge lighted, neon or other gas-filled, revolving or rotating, strings of light (except as allowed by Section XIII of this chapter), beams, beacons or flashing signs.
2. Off-premises commercial message signs are expressly prohibited, except in the case of certain directional signs in the manner and according to the terms and conditions set forth below.

I. Definitions:

- A. Directional Sign means a sign containing information limited to the name of the business, the nature of the business, the business logo, if any, and the distance and direction to the use being advertised.
- B. Commercial Message means any sign wording, logo, or other representation that, directly or indirectly, names, advertises, or calls attention to a business, product, service, or other commercial activity.
- C. Lot means any piece or parcel of land or a portion of a subdivision, the boundaries of which have been established by some legal instrument of record that is recognized and intended as a unit for the purpose of transfer of ownership.
- D. Off-premises Sign means a sign which directs attention to a business, commodity, service or entertainment not conducted, sold or offered on the premises where the sign is located, or which business, commodity, service or entertainment forms only minor and incidental activity upon the premises where the sign is displayed. This term shall not be constructed, however, to allow advertising by connecting an otherwise off-premise location to the parcel upon which the use being advertised is located by a narrow strip of land. The intent is that signs, other than directional signs, be located on a parcel directly connected with, and in the immediate vicinity of, the use. To that end, for purposes of this definition, a strip of land shall be deemed to be a "narrow strip of land" if the width of the strip is less than the minimum required street frontage in the district in which the strip is located.
- E. On-premises Sign means a sign which advertises or directs attention to a business, commodity, or service conducted, offered, or sold on the premises, or directs attention to the business or activity conducted on the premises.
- F. Noncommercial Sign means a sign which carries no message, statement, or expression related to the commercial interest of the sign owner, lessee, author or other person responsible for the sign message. Noncommercial signs include, but are not limited to, signs expressing political, social or religious views.
- G. County Road means those roads within Brown County, Indiana, that have been accepted into the State of Indiana Department of Transportation criteria for assigning credit such that Brown County, Indiana, does, in fact, receive credit or State payments for those roads.
- H. Temporary Event Sign means a noncommercial sign which is placed for a short period of time and which is designed to advertise a scheduled event.

II. Location of Directional Signs

- A. Directional signs may be placed only at the intersections of a county road, a state highway and/or a private drive (see definition in Title I of Major Streets and Highways ordinance).

- B. Directional signs shall not be placed in a state or county road right-of-way, and in no event less than five feet from the edge of the traveled (improved) portion of the roadway. Directional signs may not be placed on any corner lot or curb cut within the sight triangle. For purposes of this chapter, the term "sight triangle" shall mean a triangle area of twenty-five feet along each of the intersecting streets or curb cut, measured at the right-of way line, and in the case of a curb cut, measured at the edge of the traveled portion of the driveway.
- C. Directional signs may be placed so as to be viewed from two directions, either by mounting back-to-back, or in an "L" shaped configuration.

### III. Area, Height, and Appearance of Directional Signs

In order to preserve to the greatest extent possible the scenic character of the countryside, the appearance and size of directional signs shall be uniform and shall conform to the following standards:

- A. Sign area shall not exceed four (4) square feet.
- B. No sign shall be higher than eight (8) feet above the ground level where the sign is located.
- C. It shall be the duty of each holder of a sign permit to maintain each sign in good repair, and attractive appearance, and failure to do so may result in revocation of the sign permit and removal of the sign.

### IV. Number of Directional Signs

- A. No more than three locations per business are allowed.
- B. No more than one (1) directional sign per business per two-post stand is allowed, whether in a straight or "L" shaped configuration and no more than twelve (12) directional signs total per intersection, and no more than two (2) corners per intersection, shall be permitted.

### V. Noncommercial and On-premises Commercial Sign Regulations

Noncommercial signs and on-premises commercial signs are allowed in all districts, subject to the regulations of Section H of this chapter and subject to all other relevant provisions of the Brown County Zoning Ordinance.

### VI. Sign Area, Sign Height, and Setback Regulations

- A. In FP, FR, R1, R2 and LR districts, the maximum total sign area per lot is twenty (20) square feet and the maximum number of signs per lot is three (3), excluding the total area and number of directional signs on the lot.
- B. In GB, AB and I districts, the maximum total sign area per lot is one hundred (100) square feet, and a maximum number of signs per lot is three (3), excluding the total area and number of directional signs on the lot.

- C. In FP, FR, R1, R2 and LR districts, the maximum sign height is eight (8') feet.
- D. In GB, AB and I districts, the maximum sign height is twenty (20') feet.
- E. In all districts, signs shall be set back at least thirty (30') feet from road and highway right-of-way and from lot boundary lines.
- F. In all districts, signs may not be placed within the sight triangle (see section D -2 of this Chapter).

## VII Computation of Sign Area and Height

The following principals shall control the computation of sign area and sign height:

- A. The area of a sign face shall be computed by means of the smallest square, circle, rectangle, triangle, or combination thereof that will encompass the extreme limits of the writing, representation, emblem, or other display, together with any material or color forming an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed, but not including any supporting framework, bracing, or decorative fence or wall (when such fence or wall otherwise meets zoning ordinance regulations and is clearly incidental to the display itself).
- B. The sign area for a sign with more than one face shall be computed by adding together the area of all sign faces visible from any one point. When two identical sign faces are placed back-to-back, so that both faces cannot be viewed from any point at the same time, and when such sign faces are part of the same sign structure and are not more than 42 inches apart, the sign area shall be computed by the measurement of one of the faces.
- C. The height of a sign shall be computed as the distance from the base of the sign at normal grade to the top of the highest attached component of the sign. Normal grade shall be constructed to be the lower of (1) existing grade prior to construction or (2) the newly established grade after construction, exclusive of any filling, berming, mounding, or excavating solely for the purpose of locating the sign. In cases in which the normal grade cannot reasonably be determined or on a steeply sloping terrain, sign height shall be computed on the assumption that the elevation of the normal grade at the base of the sign is equal to the elevation of the nearest point of the crown of a public street or the grade of the land at the principal entrance to the principal structure on the lot, whichever is lower.

## VIII. Performance Standards

All signs shall conform to the following regulations:

- A. Illumination
  - 1. The source of light for any sign may not be directed into any residential area or toward any oncoming traffic. The source of illumination by whatever means shall not reflect directly on residential property.



2. In no instance shall any illuminated sign be located closer than twenty-five (25') feet to any residence.

B. Maintenance

All signs must be kept clean, neatly painted, and free from all hazards, such as, but not limited to, faulty wiring and loose fastenings, and must be maintained at all times in such safe condition so as not to be detrimental to the public health or safety.

C. Placement

No sign shall be placed so as to pose a traffic hazard, and the county highway superintendent shall be vested with authority to rescind any sign permit under this section if he deems that sign placement would cause a traffic hazard, subject only to review by the County Commissioners, if requested within thirty days of written notice of any such decision.

IX. Permits

A. No sign may be erected until the Executive Director of the Brown County Area Plan Commission has issued a permit therefore. (See Chapter 8 for appropriate permit fee).

B. Prior to the issuance of a sign permit the Director shall be furnished written proof of permission from the landowner upon whose land the sign is to be located, on a form prescribed by the Commission, and a scale drawing of the proposed sign or the sign itself.

C. Following the erection of a sign, the Zoning Inspector shall inspect the same, and issue a certificate of compliance in the event the sign complies with that for which the permit was issued. In the event that it does not, the Inspector shall promptly notify the permittee in writing of the lack of compliance and reason (s) therefore. Failure by the permittee to correct any non-compliance within ten (10) days from the date of written notice shall result in revocation of the sign permit, as well as other remedies under this ordinance. Notice sent to the address on the sign permit application shall be deemed sufficient.

D. On-premises signs that have a sign area of four (4) square feet or less and noncommercial message signs that have a sign area of four (4) square feet or less (e.g., most political and realty signs) and temporary event signs (sixteen (16) feet or less), are exempt from the permit requirement.

E. Temporary signs (i.e., signs erected or placed on a lot for a period of one week or less, including plastic or fabric banners) are exempt from the permit requirement provided that no more than one (1) temporary sign may be placed on a lot during any three (3) consecutive months.

F. Directional realty signs are exempt from the permit requirement due, in part, to their size and to their temporary nature, but are otherwise subject to the directional sign regulations (except the sight triangle requirements, due to the height of realty directional signs).

## X. Temporary Event Signs

- A. Temporary event signs may be placed no more than sixty (60) days before the event and must be removed within three (3) days of the event. Temporary event signs may be located on a lot no more than two times per year.
- B. The maximum total sign area of temporary event signs shall be eighty (80) square feet per lot.
- C. The maximum permitted size of a temporary event sign is sixteen (16) square feet.

## XI. Political Signs

- A. Political signs are not permitted on public property except on Election Day, and even then, not within the public right-of-way.
- B. Temporary political signs erected on private property may not exceed eight (8) square feet and must be removed three (3) days after Election Day, but in all other respects (e.g., total sign area per lot, setback, height, performance standards, and maintenance), are subject to the noncommercial sign regulations of this chapter.

## XII. Signs in the Public Right-of-Way

No signs shall be allowed in the public right-of-way, except:

- A. Public signs erected by or on behalf of a governmental body to post legal notices, identify public property, convey public information, and direct or regulate pedestrian or vehicular traffic;
- B. Bus stop signs erected by a public transit company;
- C. Informational signs of a public utility regarding its poles, lines, pipes, or facilities; and,
- E. Emergency warning signs erected by a governmental agency, a public utility company, or a contractor doing authorized or permitted work within the public right-of-way shall be allowed in the public right-of-way.

Any sign installed or placed in the public right-of-way (state or county), except in conformance with the requirements of this section, shall be forfeited to the public and subject to confiscation by the Plan Commission staff. In the event of confiscation, the Plan Commission staff shall: store the sign in a County building; make a reasonable attempt to notify the owner of the sign of the confiscation: provide owner with ten (10) days to recover the sign after notification. After such ten day period, the Plan Commission staff may dispose of the sign. In addition to other remedies, hereunder, the Commission shall have the right to recover from the owner or person placing such a sign the full costs of removal and disposal of such sign.

### XIII. Signs Exempt from Regulation under this Chapter

The following signs shall be exempt from regulation under this chapter:

- A. Any public notice or warning required or authorized by a valid and applicable federal, state, or local law, regulation, or ordinance (e.g., trespassing signs memorial plaques) shall be exempt from regulation under this chapter.
- B. Any sign inside a building, not attached to a window or door, that is not legible from a distance of more than three (3) feet beyond the lot line of the lot or parcel on which such sign is located shall be exempt from regulation under this chapter.
- C. Holiday lights and decorations with no commercial message shall be exempt from regulation under this chapter.
- D. Traffic control signs on private property, such as Stop, Yield, and similar signs, the face of which meets Department of Transportation standards, which contain no commercial message of any sort, and which do not exceed three (3) square feet in area, or which are flush with the roadway pavement, are exempt from regulation under this chapter.
- E. Noncommercial message flags shall be exempt from regulation under this chapter, except that the display of such flags must comply with the performance standards of Section H above.
- F. Signs incorporated on vending machines (including fuel pump housings) shall be exempt from regulation under this chapter, except that the signs must comply with the performance standards of Section H above.
- G. Open signs, neon or gas-filled using only the word “open” displayed for informational purposes on commercial establishments.

#### 4.16 WATER POLLUTION

No authorization of a use under this ordinance includes the authority to discharge liquid or solid wastes into public waters except as permitted under the Stream Pollution Control Law (Acts 1943, Chapter 214, as amended). Plans and specifications for proposed sewage and other waste treatment and disposal facilities must be approved by the Stream Pollution Control Board and the State Board of Health.

#### 4.17 INDUSTRIAL RESTRICTIONS

Light industrial and general industrial uses as defined shall conform to the following performance standards:

- A. Smoke - Any use located within 300 feet of a residence or residence zone district shall be prohibited from using solid fuels for heat or energy.

B. Particulate matter

1. Any use producing emission of dust, fly ash, sparks, dirt or similar matter, which can cause any damage to health, vegetation or property, or in such quantities as to constitute a nuisance, shall be prohibited.
2. Sources of particulate matter borne by the wind including, but not limited to, storage, refuse, service roads and yard areas, shall be maintained or improved so as not to create a hazard or nuisance.

C. Odor - Any use producing emission of odorous, noxious, or toxic matter, in such quantity as to be pernicious or offensive and readily detectable at any point along or beyond the property lines of the use area shall be prohibited.

D. Heat or glare

1. Any use producing excessive heat or glare including, but not limited to combustion and welding, must be performed so as not to be perceptible beyond the property lines of the use area.
2. Outdoor lighting, including but not limited to the illumination of parking lots, signs and storage areas shall be installed and maintained so as to direct light away from adjoining property.

E. Vibration - Any use that creates intense earth-shaking vibrations, excluding vehicular or other means of transportation, which are discernible to the human sense of feel at or beyond the property lines of the use area, shall be prohibited.

F. Noise - Any use producing noise levels above those produced by a motor vehicle entering or leaving the use area shall be prohibited.

G. Fire Hazards

1. Any use located within 300 feet of any other zoning district or within 500 feet of any place of institutional or public assembly, which includes, but is not limited to schools, hospitals, churches and athletic fields; necessitating storage (over 85 gallon) above ground or the manufacturing of fluids that produce flammable or explosive vapors or gases under ordinary weather conditions shall be prohibited.
2. Any use located less than 300 feet from a residence district or less than 40 feet from any property line, that manufactures or uses, during the process of manufacturing materials, classified or corrosive liquids, oxidizing materials, radioactive materials, flammable solids, potentially explosive chemicals, or highly toxic materials or poisonous gases as defined in Article 18, Section 1802, of the Fire Prevention Code, 1956 edition, as recommended by the National Board of Fire Underwriters, shall be prohibited.
3. Any use that stores, or manufactures materials classified as combustible, readily ignitable, free burning, or flammable as defined in the Fire Prevention Code, 1956 edition, must be performed or maintained within an enclosed building constructed of incombustible materials.

4. Any use that stores or manufactures any chemical compound, mixture or device, the primary or common purpose of which is to function by explosion including, but not limited to dynamite, black blasting powder, pellet powder, initiating explosives, or igniters, must conform to Table 11.06 of Article II, entitled, "American Table of Distances for Storage of Explosives", in the Fire Prevention Code, 1956 edition, as recommended by the National Board of Fire Underwriters.

#### 4.18 FLOOD PLAIN (FP), FLOODWAY (FW) OR FLOODWAY FRINGE (FF) REQUIREMENTS

##### A. In a Floodway Fringe (FF) or Flood Plain (FP) :

1. All residential buildings or additions to existing residential buildings shall have flood protection grades at least two feet above the regulatory flood profile. Commercial buildings may be flood proofed to an elevation of two feet above the regulatory flood if the plans and specifications are properly certified by a Registered Professional Engineer or Architect and conform to the definition of flood proofed as set forth in this ordinance.
2. All mobile homes must have pads (either concrete or stands of compacted fill) at or above the elevation of the regulatory flood. Further, all mobile homes shall be provided with ground anchors meeting Mobile Home Tie Downs, Schedule A.
3. On site waste disposal systems must be located so as to avoid impairment of them or contamination from them during the occurrence of the regulatory flood.
4. All structures shall be built so as to minimize obstruction to the flow of floodwaters.

##### B. In a Floodway (FW) District:

1. No residential buildings shall be permitted.
2. Flood proofing of non-residential structures is permitted but must conform to the definition of a flood proofed building as set forth in this ordinance and must be a certified by a registered Professional Engineer or registered Architect licensed to practice in Indiana.
3. Any structure permitted in a floodway shall be constructed on the site so as to minimize obstruction to the flow of floodwater.

## CHAPTER 5 - SPECIAL PROVISIONS

### 5.1 FLEA MARKETS

#### A. Definitions

CAMPING - means, for purposes of this section only, staying overnight anywhere other than in a permanent dwelling.

FLEA MARKET - means flea market, swap shop or meet, or similar activity, by whatever name, or those uses which involve the setting up of two (2) or more booths, tables, platforms, racks or similar display areas for the purpose of selling or buying merchandise, goods, materials, products, or other items offered for sale outside a fully enclosed building. A "flea market" as defined herein shall not be intended to include a garage sale or bake sale, which occurs no more often than every 2 months for a period of not more than 7 days, fruit or produce stands, booths in a fully enclosed building or art festivals or any similar activity or sales done by local civic groups or by local non-profit organizations.

FLEA MARKET VENDOR - means any individual, family, corporation, partnership, firm, organization, or any other group that acts as a unit, which rents, buys, or occupies display area space in a flea market for the purpose of selling merchandise, goods, materials, products, or other items.

#### B. Sanitation, Appearance, Hours of Operation, and Noises

1. At no time shall there be empty tables or booths on the flea market site.
2. Flea markets may only be operated from 9:00 a.m. until 9:00 p.m.
3. Each flea market shall maintain functional restroom facilities as required by the Brown County Board of Health.
4. The flea market site shall be kept clean of all debris, litter and trash.
5. Noise must be limited to such a level as not to disturb neighbors.
6. There shall be no camping allowed on the flea market site.
7. Within fifteen (15) days of the expiration date of the permit, the flea market site must be cleared, and all temporary structures removed.
8. There shall be no camping ("overnight stay") allowed on the flea market site, except for occasional overnight stays by vendors when their goods are present on the site.
  - a. Vendors may stay overnight on Friday and Saturday nights and also on Sunday night during an official three day weekend.
  - b. Vendors shall stay in self contained RV's if dump stations, water and electrical hookups are not available. A self contained RV is one that provides its own electricity, water and sanitary facilities.

c. Approval for overnight stays must be granted to the flea market through a Special Exception from the Board of Zoning Appeals.

#### C. Parking Requirements

1. For each one hundred (100) square feet of sales space there shall be three parking spaces either on site or adjacent to the flea market.
2. Each parking space must be no less than ten (10) feet wide by twenty (20) feet long.
3. There shall be no parking along the highway shoulder or right-of-way.
4. The owner/operator of the flea market shall see to it that the parking requirements as set forth above are adhered to, and that appropriate signs and markings are established and maintained in such a manner as to notify those persons attending the flea market of these requirements.

#### D. Licensing Permits for Vendors

1. It shall be the responsibility of the owner/operator of the flea market to determine that each vendor have and display all necessary licensing permit (s) to conduct retail sales of this nature, and to wholly refrain from granting sales space to any vendor unable to produce said permit(s).

#### E. Setback Requirements

1. The minimum distance between the front of the flea market operation and the centerline of a State Highway is one hundred ten (110) feet. County Road is ninety (90) feet.
2. The minimum distance between the back of the flea market operation and the back lot line is forty (40) feet.
3. The minimum distance between each side of the flea market operation and the side lot line is forty (40) feet.

#### F. Permits

1. No person shall operate a flea market without having first obtained from the Area Planning Director a Permit authorizing him to do so. Any Permit so issued shall be valid only for the calendar year in which it was issued, and allows the holder thereof to operate a flea market only from March 1 to November 30 of that particular year.
2. There is hereby established a fee of \$300.00 to obtain a Permit, payable to the Area Planning Commission, which fee shall be deposited in the County General Fund.
3. Prior to the issuance of a permit, the person applying therefore must furnish the Area Planning Director the following:

- a. A commitment statement indicating proposed hours of operation and lighting to be used.
  - b. A detailed plot plan drawn to scale of not less than 1" = 50' showing:
    - (1). Location and dimensions of perimeter of property lines (length, width, and acres.
    - (2). Location and names of public roads adjacent to the property.
    - (3). Location and dimension of building(s) to be housing the flea market.
    - (4). Dimensions of parking area identifying parking spaces 10' x 20', width of driving lanes (25') in parking lot, and flow of traffic.
    - (5). Distance of setback from center of road and from side and rear property lines for sales area, parking lot, and any existing or proposed structures.
    - (6). Location of driveway.
  - c. Septic permit from County Sanitarian or State Board of Health.
  - d. Driveway Permit from State Highway Commission or County Highway Garage body, whichever has jurisdiction of the road.
4. Permits so issued shall not be sold, assigned, transferred, or in any manner conveyed.

## G. Violations

### 1. Revocation of Permit

- a. Failure to comply with any of the requirements set forth in paragraphs B through and including H above shall result in the revocation of the violator's Permit, in accordance with the following procedures:
  - (1) Upon receipt of a verified report of a violation of this section, the Area Planning Director shall notify the Permit holder thereof, and allow him 30 days in which to correct said violation.
  - (2) In the event the person accused of the violation neither corrects said violation or convinces the Director of his compliance without need of correction, the matter of the violation shall be placed before the (Area Plan Commission / Board of Zoning Appeals) at the next regularly scheduled meeting, and the accused violator shall be notified of the date, time, and place of said meeting by certified or registered mail.
  - (3) At the hearing before the (Commission/Board), the accused violator shall be given an opportunity to present his position and to question those who are alleging the violation. A decision shall then be made upon vote of those members present, and a vote of a majority of the Commission/Board membership shall be necessary before a permit may be revoked.



- (4) Any adverse decision may be appealed by writ of Certiorari to the Brown Circuit Court for review.
- b. Permit which has been revoked may not be reissued for a period of two (2) years thereafter.
- c. In the event of a revocation of a Permit, the fee previously paid therefore shall be deemed to be forfeited.

## 2. Penalty

Any person failing to comply with any of the requirements set forth in paragraphs B through and including F above shall be subject to a fine of one hundred dollars (\$100.00) per day.

- a. Separate violations - Each day a violation occurs shall be deemed a separate violation.
- b. Enforcing officer -The Area Planning Director, her deputy, or duly appointed agent are hereby authorized to enforce the provisions of this ordinance.

## 3. Legal Action

Action on the violation of any of the aforementioned requirements of this section and the right of injunction shall be as provided in Section 141 et sequ of Public Law 178, Acts of 1979 of the Indiana General Assembly.

## 5.2 HOME OCCUPATIONS

### A. Definition

Except as otherwise specifically provided, a home occupation is an accessory use of a dwelling unit, for monetary or equivalent gain, conducted entirely within said dwelling unit, carried on by one or more persons, all of who reside within the dwelling unit, and, unless specifically authorized herein, where no persons are employed other than resident and domestic help. The use is clearly incidental and secondary to the use of the dwelling for residence purposes and does not change the character thereof or adversely affect the uses permitted in the residential district of which it is a part. There shall be no outside storage of any kind and any indoor storage, construction, alterations, or electrical or mechanical equipment used shall not change the fire rating of the structure of the fire district in which the structure is located.

### B. Examples of Uses that Frequently Qualify as Home Occupations

The following are typical examples of uses, which often can be conducted within the limits of the restrictions established in this chapter and thereby qualify as home occupations. Uses, which qualify as "home occupations" are not limited to those named in this paragraph (nor does the listing of a use in this paragraph automatically qualify it as a home occupation): accountant, architect, artist, author, beauty parlor, consultant, dressmaking, individual stringed instrument instruction, individual tutoring, insurance, millinery, preserving and home cooking, realtor.

### C. Use Limitation

In addition to the use limitations applicable in the zoning district in which located, all home occupations shall be subject to the following use limitations:

1. A home occupation must be conducted within a dwelling which is the bona fide residence of the principal practitioner or in an accessory building thereto which is normally associated with a residential use.
2. Except for articles produced on the premises, no stock in trade shall be displayed or sold on the premises.
3. No alteration to the exterior of the principal residential building shall be made which changes the character thereof as a dwelling, either by the use of colors materials, construction, lighting, signs, or the emission of sounds, noises, vibrations.
4. No outdoor display of goods or outside storage of equipment or materials used in the home occupation shall be permitted.
5. Except as otherwise provided, such occupation shall be conducted solely by resident occupants in their dwelling unit.
6. No use shall require internal or external alterations or involve construction features or the use of electrical or mechanical equipment that would change the fire rating of the structure of the fire district in which the structure is located.
7. No use shall create noise, dust, vibration, smell, and smoke glare, electrical interference, fire hazard, or any other hazard or nuisance to any greater or more frequent extent than that usually experienced in an average residential occupancy in the district in question under normal circumstances wherein no home occupation exists.
8. Only one nameplate shall be allowed. It may display the name of the occupation (e.g. John Jones, Realtor). It shall not exceed two (2) square feet in area, shall be non-illuminated. The limitation to one nameplate is intended to apply to all lots, including corner lots.
9. It shall not involve the use of commercial vehicles for delivery of materials to or from the premises.

### D. Zoning Districts Where Allowed

A Use that qualifies as a home occupation may be conducted in any zoning district except Lake Residential.

### E. No Permit Required

The following uses are permitted and may be carried on without the practitioner having first obtained a permit, provided that the activity being carried on is in compliance with the

other provisions of this section, and provided further that no retail sales are conducted at the home occupation site:

1. Artists and artisans
2. Authors and composers
3. Dressmakers, seamstresses, and tailors
4. Home crafts such as model making, rug weaving, lapidary work and cabinet making.
5. Office facility of minister, rabbi, or priest.
6. Office facility of a salesperson, sales representative, or manufacturer's representative.
7. The letting for hire of not more than two (2) rooms for rooming or boarding use for not more than two (2) persons, neither of whom is a transient. (Includes Home Stay facilities).
8. Individual musical instrument instruction.
9. Individual tutoring.
10. Any other activities not specifically limited by other parts of this ordinance, which is consistent with or similar to the types of activities set forth above, and which requires no increase in parking areas, traffic, and noise levels beyond those normally contemplated in a single-family dwelling structure.

#### F. Permit Required

The following uses are permitted and may be carried on only after the practitioner has applied for and received a permit from the Area Planning Director:

1. Architect, accountant, real estate broker or salesperson, insurance agent, land surveyor, upholstery.
2. Any of those uses or occupations listed in subsection E, "No Permit Required", which intend to conduct Retail sales from the home.
3. Any other activity not specifically limited by other parts of this ordinance, which is consistent with or similar to the types of activities listed above, and for which, although some increase in parking areas, traffic, and noise level may be foreseen, said increase would be minimal and not offensive to surrounding residents.

#### G. Uses Permitted Only With Special Exception

The following uses are permitted and may be carried on as home occupations only after the practitioner has applied for and been granted a Special Exception as provided for in Chapter 3, Section 3.3 of the Brown County Zoning Ordinance, and applied for and received a permit from the Area Planning Director:

1. Beauty shop or beauty parlor, owner-operated.
2. Auto repair, minor or major, or the painting of vehicles, trailers, or boats, provided that no more than four (4) licensed vehicles other than the owner's own vehicles and no unlicensed vehicles are stored on the property.
3. Instruction to two (2) or more students at a time.
4. Photo developing or studios.
5. Antique shops.
6. Private schools with organized classes.
7. Any home occupation to be conducted in a two-family or multi-family dwelling.
8. Any other use authorized by Subsections E or F above, in which there are to be employees other than family members residing in the dwelling unit, PROVIDED, however, that in no event shall there be allowed more than two (2) such employees.
10. Any other activity not specifically limited by other parts of this ordinance, which is consistent with or similar to the types of activities listed above but which would in all likelihood involve increased parking areas, traffic, noise or vibration levels, or outdoor activities and which requires scrutiny, limitation, and an opportunity for surrounding residents to be heard in opposition thereto due to the propensity of such activities, once started to rapidly increase beyond the limits permitted for home occupation.

No special exception shall be granted under this subsection unless the Board of Zoning Appeals finds that, in addition to the requisite findings set forth in Chapter 3, Section 3.3, the proposed use is in full compliance with the terms of this section that the proposed use will not alter the nature of the neighborhood in which it is to be located, and that the proposed use will not expand or enlarge to the point where it will exceed the limits permitted for home occupations.

#### H. Procedures

1. Powers and Duties of Plan Director
  - a. It shall be the duty of the Area Planning Director (hereinafter referred to as "Director") to investigate complaints that a home occupation is being carried on within the area of jurisdiction (i.e. Brown County, Indiana) in violation of the terms of this ordinance.
  - b. In the event it should come to the attention of the Director that such a violation is occurring, or that a use has expanded beyond its original classification, or that a use is being carried on which exceeds conditions set forth either by the Director in issuing a permit, or the Board of Zoning Appeals in granting a special exception, the Director is hereby empowered and authorized to make a determination whether a violation does indeed exist, and, if so, to notify the offending party or

parties that remedial action (either application for a permit or a special exception, or cessation of the violation) must be initiated within thirty (30) days. Said notice shall be by certified or registered mail, return receipt requested.

- c. In cases where the Director has made the determination that a violation exists, the alleged violator may opt to appeal that decision to the Board of Zoning appeals in the manner set forth below. Such an appeal must be initiated within ten (10) days of the aggrieved party's receipt of notice of the violation.
- d. Should the alleged violator fail to take appropriate remedial action within thirty (30) days as set forth above, or successfully appeal the Director's decision, the Director is hereby authorized and empowered to revoke any previously granted permit, and to file suit in the name of the brown County Area Plan Commission, seeking injunctive relief to enforce the Ordinance.

## 2. Time Limitations

- a. Any permit issued shall be valid for one (1) year only from the date of issuance.
- b. The holder of the permit may seek renewal of same annually, by making written request therefore, and certifying in that request that the use has not expanded beyond that for which the permit was initially granted. Said request shall be made no later than thirty (30) days prior to expiration, and shall be accompanied by a renewal fee of \$10.00. (See Chapter 8:3 for revised filing fees)
- c. The request for renewal shall be reviewed and an inspection of the property made by the Director and/or authorized personnel to verify continued compliance with the necessary criteria and conditions established with the initial approval. If, in the judgment of the Director, the applicant has not complied with said criteria and conditions, the applicant shall be so informed and the Director shall take appropriate corrective measures, all as set forth in Subsection H.1. above.
- d. Should the use for which a permit was issued cease for a period of six (6) continuous months, said period shall become automatically null and void.

## 3. Permits

The fee for all Home Occupation Permits shall be Ten Dollars (\$10.00).(See Chapter 8:3 for revised filing fees).

## 4. Appeals

- a. In the event an applicant for a Home Occupation permit whose application is denied by the Director desires to appeal the Director's decision, said appeal may be initiated by filing a Notice of Appeal with the Area Planning Office, on a form to be provided by that office, no later than ten (10) days from the date that the applicant is informed of the Director's decision.

- b. Upon receipt by the Director of a Notice of Appeal, the matter complained of shall be placed on the agenda of the Board of Zoning Appeals as soon as time allows.
- c. Notice of appeal shall be published in a newspaper of general circulation published in the county no later than ten (10) days prior to the date of the meeting at which the appeal is to be considered.

## CHAPTER 6 - IMPROVEMENT LOCATION PERMITS

### 6.1 APPLICABILITY

- A. An Improvement Location Permit shall be obtained prior to:
  - 1. implementing a special exception granted under Section 3.4;
  - 2. constructing, reconstructing, locating, moving, enlarging, demolishing and structure that requires a building permit for construction, or structurally altering any building or other structure;
  - 3. remodeling a building or structure that includes additional plumbing, wiring, or heating/cooling facilities;
  - 4. making any significant land alterations;
  - 5. any construction in a flood plain.
- B. An Improvement Location Permit shall not be required for:
  - 1. maintenance or repair of existing structures not involving any change of use, additional lot coverage, or increase in structure size;
  - 2. minor lot and yard improvements such as driveways, patios, fences, retaining walls, landscaping, boat docks, etc.;
  - 3. accessory structures that contain less than 120 square feet of floor area and are not on permanent foundations.
- C. The Director may withhold issuing a permit pending submission of relevant local, state and federal permits.
- D. Improvement Location Permits shall be valid for one year from the date on which they are issued. If the change in use is not completed within one year, upon application the Permit will be extended for an additional year with no additional fee charged. If the work is not completed at the end of that period, a new Improvement Location Permit must be obtained for the project.
- E. If the application for an Improvement Location Permit is not approved or denied within 30 calendar days, the application shall be deemed denied. Any appeal of the decision shall be subject to the Rules of Procedure for the Board of Zoning Appeals. When filing the appeal, the applicant shall not bear the cost of filing fees or of the required legal notification.

## 6.2 CERTIFICATE OF OCCUPANCY

- A. After the Improvement Location Permit has been issued, the land or structure that is the subject of the permit cannot be used for that purpose until the change has been completed and a Certificate of Occupancy is issued.
- B. Within 10 calendar days of being notified by the applicant that the change has been made, the Director or authorized representative shall inspect the premises and determine if the change conforms to the ordinance and the conditions of the Improvement Location Permit. If the change is in conformance, the Director or representative shall issue a Certificate of Occupancy.

## 6.3 PLANS

- A. A person who applies for an Improvement Location Permit under Section 6.1 must furnish the Planning Office with plans showing:
  - 1. the location of land concerned; the location and size of all existing buildings, structures, ponds, and septic systems on the site; the location of the proposed use; the location and size of all entrances to and exits from the site; and all adjacent streets and highways. If critical to the proposed use, the Director may also request the locations of any easements, power lines, gas lines or other information determined to be necessary;
  - 2. front and side elevations of any proposed structure.
- B. Plans furnished shall be kept by the Plan Commission as permanent records.
- C. A site plan review will be required for an airport, a heliport, a hospital, an industrial park, a mobile home park or travel trailer park, a penal or correctional institution, a private recreational development, a public utility substation or exchange, PUD, a shopping center, and a commercial or industrial development.
- D. As a condition of issuing a permit, that applicant may be required to relocate a structure or an entrance or exit, or include an entrance or exit not shown on the plan, if the requirement is necessary in the interests of the public welfare or to an appropriate balancing of the interests of persons in the district and vicinity concerned.
- E. The Plan Director shall review all applications for compliance with the floodplain management regulations of Chapter 10 of Brown County Zoning Ordinance.

## 6.4 COORDINATION WITH OTHER AGENCIES AND BOARDS

- A. No Improvement Location Permit shall be issued prior to the Plan Director's review of all permits required from any federal, state or local agency.
- B. Selected examples of agencies from which permits may be required include the Indiana Department of Fire and Building Services for buildings that require its approval (must furnish copy of plans stamped approved by the Department of Fire and Building Services); Brown County Health Department or State Board of Health for sewage disposal systems; Department of Natural Resources for any construction in a floodway; County Highway



Department of Indiana Department of Transportation for driveways onto public roads. This is not meant to be a complete listing.

- C. Prior to the issuance of an Improvement Location Permit, the applicant must first obtain a driveway permit from the County Highway Department or, where applicable, the Indiana Department of Transportation.
- D. A driveway permit onto a county road shall be subject to the requirements of the current county ordinance that sets standards for private driveways.
- E. An Improvement Location Permit for a special exception may not be issued until the Board of Zoning Appeals approves the special exception.

#### 6.5 RECORDS

The Plan Office shall keep a record of each Improvement Location Permit and each certificate of occupancy issued.

#### 6.8 FILING FEES

See Chapter 8

## **CHAPTER 7 - ADMINISTRATION, ENFORCEMENT, AND APPEALS**

### **7.1 BOARD OF ZONING APPEALS: ESTABLISHMENT AND ORGANIZATION**

- A. A Board of Zoning Appeals is established, with membership as provided by State law.
- B. At the first meeting in each calendar year, the Board shall elect from among its members a Chairman and a Vice-Chairman. Consistently with State law, it may appoint and fix the compensation of a secretary and such employees as it considers necessary to discharging its duties.
- C. The Board shall prescribe such regulations as it considers necessary to carry out this ordinance.
- D. Meetings of the board shall be open to the public.
- E. The Board shall keep minutes of its meetings, keep records of all examinations and other official actions, make all findings in writing, and record the vote of each member on each question. Minutes and records shall be filed in the office of the Board and made available to the public.

### **7.2 BOARD OF ZONING APPEALS: HEARINGS**

Upon application for a special exception or variance, and upon appeal from a decision of the Planning Coordinator, the Board shall hold a public hearing. Public notice setting forth the time and place shall be given at least 10 days before the date of the hearing in a newspaper of general circulation published in the County. Interested parties shall be notified as provided by the Board. The cost of such notices shall be borne by the person applying or appealing. For filing fees see Chapter 8, Section 8.2.

### **7.3 COUNTY PLANNING COORDINATOR**

The Office of County Planning Coordinator is established. The County Planning Coordinator has the principal responsibility for enforcing this ordinance.

### **7.4 VIOLATIONS, PENALTIES AND ENFORCEMENT**

- A. The erection, demolition, conversion, construction, enlargement, moving or maintenance of any structure, or the use of any land, structure or premises, which is contrary to any of the provisions of this ordinance, is hereby declared to be a common nuisance and an unlawful violation of this ordinance.
- B. The erection, demolition, conversion, construction, enlargement, moving or maintenance of any structure, or the use of any land, structure, or premises, which is contrary to any requirement, condition or commitment imposed or made by the Board, Commission, Administrator or applicant under the provisions of this ordinance, is hereby declared to be a common nuisance and an unlawful violation of this ordinance.
- C. Any person, whether as principal agent, owner, lessee, tenant, contractor, builder, architect, engineer or otherwise who, either individually or in concert with another, acts

contrary to any provision of this ordinance or a condition or commitment made thereunder, shall be liable for maintaining a common nuisance and shall be in violation of this ordinance.

- D. The County Attorney or the Plan Commission Attorney shall immediately upon any such violation having been called to his/her attention by the Plan Coordinator, institute injunction, abatement or any other appropriate action in his discretion to prevent, enjoin, abate or remove such violation.
- E. Any person who violates this ordinance shall be subject to a civil penalty of not more than five hundred dollars (\$500.00) for each such violation. Each day any such violation is committed or permitted to continue constitutes a separate ordinance violation.
- F. Upon a reasonable belief that a person is violating a provision of this ordinance or a condition, requirement or commitment imposed or made thereunder, the Plan Coordinator may seek, with the assistance of the County Attorney or the Plan Commission Attorney, the following civil remedies:
  - 1. a civil penalty for ordinance violation;
  - 2. a temporary restraining order, preliminary injunction or permanent injunction to restrain a person from violating the ordinance or a condition, requirement or commitment imposed or made thereunder; and,
  - 3. a mandatory injunction directing a person to perform a condition, requirement or condition imposed or made under the ordinance or to remove a structure erected in violation of the ordinance.

The foregoing remedies may be sought by any property owner specially damaged by any such violation of the ordinance.

- G. In the event the Plan Coordinator finds that a violation of the terms and provisions of an approval, certificate or permit granted pursuant to these regulations has occurred, the Plan Coordinator may use the following administrative remedies:
  - 1. suspend and withhold other approvals, certificates and/or permits relevant to the development or use of the site on which the violation has occurred (e.g., if a structure which is subject to a Commission-approved development plan is occupied prior to the issuance of a land use certificate therefore, and such land use certificate cannot be issued because all improvements serving such structure (as shown on the approved development plan, including sewage disposal systems) have not been properly installed or have not become operational, the Administrator shall not issue any additional improvement location permits for structures within the development plan until all previously approved improvements serving such structure are properly installed and operational, and such structure otherwise qualifies for the issuance of a land use certificate); and/or,
  - 2. issue a stop work order and instruct the Building Permit Official to suspend and withhold all building code inspections relevant to the development or use of the site on which the violation has occurred (e.g., if the terms and provisions of an erosion control/grading plan have been violated, the Building Permit Official shall, at the Plan Coordinator's request, suspend and withhold all subsequent building code inspections

at the site of the violation, until the violation has been corrected, as determined by the Plan Commissioner)(The Building Permit Official shall comply with the Plan Coordinator's instructions in this regard); and/or,

3. draw on an applicable letter of credit, or other financial guaranty, as necessary to affect any remedial actions required to abate the violation; and/or,
4. revoke the permits, certificates and/or approvals that have been violated.

The purpose of each of the foregoing administrative remedies is to encourage compliance with the terms and provisions of the approval, certificate and/or permit without having to resort to litigation. If used, the Plan Coordinator shall apply the foregoing remedies in a measured and reasonable fashion to achieve their recognized purpose (e.g., withholding or revoking only those permits that relate directly to the violation, such as improvement location permits for the structures that would be primarily served by the unfinished street).

- H. The remedies provided for in these regulations shall be cumulative, and not exclusive, and shall be in addition to any other remedies provided by law.

## 7.5 APPEALS

- A. A decision of the Planning Coordinator enforcing this ordinance may be appealed to the Board by any person who is adversely affected by the decision. For filing fees, see Chapter 8, Section 8.2
- B. On an appeal under subsection (a), the Board may make any decision that the Planning Coordinator might have made.
- C. A decision of the Board is subject to review by certiorari.

## 7.6 PERMIT REVOCATION

- A. Any permit, certificate or approval issued or granted under this ordinance may be revoked by the Plan Coordinator, in accordance with the provisions of this chapter, if the Plan Coordinator finds that the recipient of the permit, certificate or approval ("recipient") fails to use, develop or maintain the subject property in accordance with the plans submitted, the requirements and standards of this ordinance, any additional requirements or conditions imposed by the County, Board, Commission or Plan Coordinator, or any commitments or self-imposed conditions made by the recipient.
- B. No person may continue to improve or make use of the subject property in the manner authorized by a permit, certificate or approval, after the permit, certificate or approval has been revoked.
- C. The County, Board, Commission, or Plan Coordinator may not issue any additional permits, certificates or approvals directly affecting or relative to the subject property until the basis for the revocation has been removed by the applicant or the matter otherwise resolved by the County, Board, Commission, Plan Coordinator or recipient.

- D. If the Plan Coordinator finds that sufficient grounds exist for the revocation of a permit, certificate or approval, the Plan Coordinator shall send the recipient a ten (10) day written notice of intent to revoke by certified mail, return receipt requested, shall inform the recipient of the specific basis found to justify revocation, and shall specify the actions necessary to avoid revocation. The ten (10) day notice period commences on the date the notice is delivered or on the date the notice is returned to the Plan Coordinator, marked refused or undelivered. Upon request, within five (5) days, the Plan Coordinator shall review the basis of the intended revocation with the recipient. The recipient shall implement the actions specified by the Plan Coordinator within ten (10) days of the date of notice or within such other reasonable time as may be determined by the Plan Coordinator. If the Plan Coordinator revokes a permit, certificate or approval, the Plan Coordinator shall send the recipient with a written notice of revocation which specifies the specific basis of the revocation and which informs the recipient of his right to appeal the Plan Coordinator's action.
- E. The revocation of any permit, certificate or approval may be appealed to the Board by any person claiming to be adversely affected by the revocation. Every appeal shall be filed within fourteen (14) days from the date of the order, requirement, decision or determination. Notice of hearing on the appeal shall be given ten (10) days prior to the Board's hearing date and may be made a part of the Notice of Hearing by the Plan Coordinator. The Board's hearing on the Plan Coordinator's action shall be de novo, in the same manner as the though the application was originally filed with the Board. The decision of the Board with respect to revocation shall be the final administrative decision on the subject. Any further appeal would be to the courts through writ of certiorari.

## CHAPTER 8 - FILING FEES

### 8.1. THE BROWN COUNTY AREA PLAN COMMISSION SHALL SET APPROPRIATE FEES FOR THE FOLLOWING CATEGORIES

#### A. Improvement Location Permits for

1. residences (single family, two family and multifamily), additions and residential remodeling;
2. accessory structures including agricultural structures, sheds over 120 square feet, below-ground and above-ground swimming pools.
3. electrical service up grades;
4. commercial structures.

Note: If more than five (5) inspections are required for a residential use, an additional fee as established by the Area Plan Commission will be assessed.

#### B. Hearings for

1. variances;
2. special exceptions;
3. appeals of a decision;
4. property divisions including major subdivision, minor subdivisions, planned unit developments, vacations of plats
5. amendments of the zoning ordinance or zoning districts.

#### C. Permits for

1. flea markets;
2. home occupations;
3. on-premise signs and off-premise signs.

### 8.2 Filing Fees: Non Returnable

No part of any filing fee paid pursuant to this section shall be returnable to the applicant or petitioner.

### 8.3 Filing Fees: Approval

Filing fees established by the Plan Commission shall be presented to the Board of County Commissioners for approval by a Resolution.

See New Fees effective October 2, 2006

**BROWN COUNTY AREA PLAN COMMISSION**  
**FILING FEES**  
**As of October 2, 2006**

**IMPROVEMENT LOCATION PERMITS:**

<u>Residences</u>	<u>\$100 + \$.07 per sq ft.</u>
<u>Duplexes</u>	<u>\$200 + \$.07 per sq ft.</u>
<u>Additions, Remodeling</u>	<u>\$50 + \$.07 per sq ft.</u>
<u>Accessory Structures</u>	<u>\$40</u>
<u>Swimming Pools</u>	<u>\$50 above ground</u>
	<u>\$100 in ground</u>
<u>Electric Upgrade</u>	<u>\$25</u>

**COMMERCIAL:**

<u>New Structures</u>	<u>\$200 + \$.07 per sq ft.</u>
<u>Remodeling, Addition Public Buildings</u>	<u>\$100 + .07 per sq ft.</u>
<u>Wireless Comm. Fac. (without a Special Exception)</u>	<u>\$150</u>
<u>Other Structure (water, radio tower, underground storage tank, etc)</u>	<u>\$150</u>

**HEARINGS:**

<u>Variance</u>	<u>\$100</u>
<u>Special Exception</u>	<u>\$100</u>
<u>Appeal</u>	<u>\$100</u>
<u>Major Subdivision- primary</u>	<u>\$200 plus \$25 per lot</u>
<u>Major subdivision-secondary</u>	<u>\$300</u>
<u>Minor Subdivision</u>	<u>\$100</u>
<u>Planned Unit Development (Outline plan)</u>	<u>\$300</u>
<u>Planned Unit Development (Development plan)</u>	<u>\$200</u>
<u>Replat</u>	<u>\$100</u>
<u>Vacation of Plat</u>	<u>\$100</u>
<u>Amendments and Rezoning</u>	<u>\$250</u>
<u>Wireless Communication Facilities-Special Exception</u>	<u>\$200</u>

**MISC. FEE'S:**

<u>Contractor listing (annual)</u>	<u>\$25</u>
<u>Contractor electrical test</u>	<u>\$35</u>
<u>Flea Market permits (annual)</u>	<u>\$300</u>
<u>Home Occupation permits (annual)</u>	<u>\$15</u>
<u>County sign permit</u>	<u>\$15</u>
<u>Signs for Town of Nashville</u>	<u>\$25</u>
<u>Directional signs inspection (annual)</u>	<u>\$15</u>
<u>Photocopies (per page)</u>	<u>.10</u>

\*\*\*\*Brown County Ordinance Chapter 8:2 states: No part of any filing fee paid pursuant to this section shall be returnable to the applicant or petitioner.



## **CHAPTER 9 – MISCELLANEOUS**

### **9.1 SEVERABILITY**

If a part of this ordinance is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this ordinance is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

### **9.2 EFFECTIVE DATE**

This ordinance takes effect upon its passage and approval by the Board of County Commissioners.

## CHAPTER 10 – FLOOD PLAIN MANAGEMENT

### 10.1 STATEMENT OF PURPOSE

The purpose of this chapter is to guide development in flood hazard areas in order to:

- A. prevent unwise developments from increasing flood or drainage hazards to others;
- B. protect new buildings and major improvements to buildings from flood damage;
- C. protect human life and health from the hazards of flooding;
- D. lessen the burden on the taxpayer for flood control projects, repairs to flood-damaged public facilities and utilities, and flood rescue and relief operations;
- E. maintain property values and a stable tax base by minimizing the potential for creating flood blighted areas; and
- F. make federally subsidized flood insurance available for property in Brown County, Indiana by fulfilling the requirements of the National Flood Insurance Program.

### 10.2 Definitions

The following definitions shall apply throughout this chapter.

**Building** – see “structure”.

**Development** – shall mean any man-made change to improved or unimproved real estate including but not limited to:

1. construction, reconstruction or placement of a building or any addition to a building;
2. installing a manufactured home on a site of preparing a site for installation of a manufactured home;
3. installing a recreational vehicle on a site for more than fourteen (14) days;
4. installing utilities, erection of walls and fences, construction of roads or similar projects;
5. construction of flood control structures such as levees, dikes, channel improvements, etc.;
6. mining, dredging, filling, grading, excavation, or drilling operations;
7. construction and/or reconstruction of bridges or culverts;
8. storage of materials; or
9. any other activity that might change the direction, height, or velocity of flood or surface waters.

Development does not include activities such as the maintenance of existing buildings and facilities such as painting, re-roofing; resurfacing roads; or gardening, plowing, and similar agricultural practices that do not involve filing, grading, excavation, or the construction of permanent buildings.

**Existing Manufactured Home Park, P.U.D. or Subdivision** – shall mean a manufactured home park, P.U.D. or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before January 1, 1973.

**Expansion to an Existing Manufactured Home Park, P.U.D. or Subdivision** – shall mean the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

**FBFM** – shall mean Flood Boundary and Floodway Map.

**FEMA** - shall mean Flood Emergency Management Agency.

**FHBM** – shall mean Flood Hazard Boundary Map.

**FIRM** – shall mean Flood Insurance Rate Map.

**Flood** – shall mean a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow, the unusual and rapid accumulation, or the runoff of surface waters from any source.

**Floodplain** – shall mean the channel proper and the areas adjoining any wetland, lake or watercourse which have been or hereafter may be covered by the regulatory flood. The floodplain includes both the floodway and the floodway fringe districts.

**Flood proofed Building** – means a building which complies with Sections 7 and 8 of this Chapter.

**Flood Protection Grade or FPG** – shall mean the elevation of the regulatory flood plus two feet at any given location in the SFHA.

**Floodway** – shall mean the channel of a river or stream and those portions of the floodplains adjoining the channel which are reasonably required to efficiently carry and discharge the peak flood flow of the regulatory flood of any river or stream.

**Floodway Fringe** – shall mean those portions of the flood hazard areas lying outside the floodway.

**LOMA or Letter of Map Amendment** – shall mean an amendment to the currently effective FEMA map that establishes that a property is not located in a Special Flood Hazard Area (SFHA). A LOMA is only issued by FEMA.

**LOMR or Letter of Map Revision** – An official revision to the currently effective FEMA map. It is issued by FEMA and changes flood zones, delineations, and elevations.

**Lowest Floor** – shall mean the lowest of the following:

1. the top of the basement floor;
2. the top of the garage floor, if the garage is the lowest level of the building;
3. the top of the first floor of buildings elevated on pilings or constructed on a crawl space with permanent openings; or
4. the top of the floor level of any enclosure below an elevated building where the walls of the enclosure provide any resistance to the flow of flood waters unless:
  - a. the walls are designed to automatically equalize the hydrostatic flood forces on the walls by allowing for the entry and exit of flood waters, through providing a minimum of two (2) openings (in addition to doorways and windows) having a total area of one (1) square inch for every one (1) square foot of enclosed floor area subject to flooding. The bottom of all such openings shall be no higher than one (1) foot above grade; or
  - b. such enclosed space shall be usable for the parking of vehicles and building access.

**Manufactured Home** – shall mean a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term “manufactured home” does not include a “recreational vehicle”.

**New Manufactured Home Park, P.U.D. or Subdivision** – shall mean a manufactured home park, P.U.D. or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after January 1, 1973.

**Recreation Vehicle** – shall mean a vehicle which is: (1) built on a single chassis; (2) four hundred (400) square feet or less when measured at the largest horizontal projections; (3) designed to be self-propelled or permanently towable by a light duty truck; and (4) designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational camping, travel, or seasonal use.

**Regulatory Flood** – shall mean the flood having a one percent (1%) probability of being equaled or exceeded in any given year, as calculated by a method and procedure which is acceptable to, and approved by, the Indiana Natural Resources Commission and the Federal Emergency Management Commission. The regulatory flood elevation is defined in Section 4 of this chapter. The “Regulatory Flood” is also known by the term “Base Flood”.

**Regulatory Flood Profile** – shall mean a longitudinal profile along the thread of a stream showing the maximum water surface elevation attained by the regulatory flood.

**SFHA or Special Flood Hazard Area** – shall mean those lands within the unincorporated areas of Brown County, Indiana which are subject to inundation by the regulatory flood. The SFHAs are generally identified as such on the Flood Insurance Management Agency and dated January 3, 1986.

**Structure** – shall mean anything that is constructed or erected and that requires location on or in the ground or attachment to something having a location on or in the ground and that is enclosed by walls and a roof. The term includes, but is not limited to, a gas or liquid storage tank, a manufactured home, or a prefabricated building. The term also includes recreational vehicles to be installed on a site for more than fourteen (14) days.

**Substantial Improvement** – shall mean any reconstruction, rehabilitation, addition, or other improvement or a structure, the cost of which equals or exceeds forty percent (40%) of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage” regardless of the actual repair work performed. The term does not include improvements of structures to correct existing violations of state or local health, sanitary, or safety code requirements or any alteration of a “historic building or structure” provided that the alteration will not preclude the building’s or structure’s continued designation as a “historic building or structure”.

### 10.3 Duties of the Director

The Executive Director of the Brown County Area Plan Commission (Director), also referred to as the Planning Coordinator, is hereby appointed to review all development and subdivision proposals to ensure compliance with this chapter, including but not limited to the following duties;

- A. ensure that all development activities within the SFHAs meets the requirements of this chapter;
- B. provide information and assistance to citizens upon request about permit procedures and floodplain construction techniques;
- C. ensure that construction authorization has been granted by the Indiana Natural Resources Commission for all development projects subject to Section 7 of this chapter, and maintain a record of such authorization (either copy of actual permit or letter of recommendation);
- D. maintain a record of the “as-built” elevation of the top of the lowest floor (including basement) of all new and/or substantially improved buildings constructed in the SFHA, such buildings being inspected before, during and after construction;
- E. maintain a record of the engineer’s certificate and the “as built” floodproofed elevation of all buildings subject to Section 7 of this chapter;
- F. cooperate with state and federal floodplain management agencies to improve base flood and floodway data and to improve the administration of this chapter. Submit reports as required for the National Flood Insurance Program; and
- G. maintain for public inspection, and furnish upon request, regulatory flood data, SFHA maps, letters of map amendment (LOMA), letter of map revision (LOMR), copies of DNR

permits and letters of recommendation, Federal permit documents, and “as built” elevation and floodproofing data for all buildings constructed subject to this chapter.

- H. Notify adjacent communities and the State Coordinating Office prior to any alteration or relocation of a watercourse, and submit copies of such notification to FEMA.

#### 10.4 Regulatory Flood Elevation

This chapter’s protection standard is the regulatory flood. The best available regulatory flood data is listed below. Whenever a party disagrees with the best available data, the party submitting the detailed engineering study must replace existing data with better data and submit it to the Indiana Department of Natural Resources for review and approval.

- A. The regulatory flood elevation for the SFHAs of all lakes, rivers and streams shall be as delineated in the Flood Insurance Study of Brown County Indiana, prepared by the Federal Emergency Management Agency and dated January 3, 1986, and the corresponding Flood Boundary and Floodway Maps and Flood Insurance Rate Maps of the same date.
- B. If the Special Flood Hazard Area (SFHA) is delineated as “Zone A” on the County Flood Insurance Rate Map, the regulatory flood elevation and floodway limits shall be according to the best data available as provided by the Indiana Department of Natural Resources.

#### 10.5 Improvement Location Permit

No person, firm, corporation, or government body not exempted by state law shall commence any development in the SFHA without first obtaining an Improvement Location Permit from the Director. The Director shall not issue an Improvement Location Permit if the proposed “development” does not meet the requirements of this chapter.

- A. The application for an Improvement Location Permit shall be accompanied by the following:
  - 1. a description of the proposed development;
  - 2. location of the proposed development, sufficient to accurately locate property and structures in relation to existing roads and watercourses;
  - 3. a legal description of the property site;
  - 4. a site development plan showing existing and proposed development locations and existing and proposed land grades; and
  - 5. elevation of the top of the lowest floor (including basement) of all proposed structures. Elevation should be in National Geodetic Vertical Datum of 1929 (NGVD) or North American Vertical Datum (NAVD). In either case, the conversion formula should be included.
- B. Upon receipt of an application for an Improvement Location Permit, the Director shall determine if the site is located within an identified floodway, floodway fringe or within the floodplain where the limits of the floodway have not yet been determined.

1. If the site is in an identified floodway, the Director shall require the applicant to forward the application, along with all pertinent plans and specification, to the Indiana Department of Natural Resources and apply for a permit for construction in a floodway. Under the provisions of IC 14-28-1 a permit from the Indiana Natural Resources Commission is required prior to the issuance of a local building permit for any excavation, deposit, construction or obstruction activity located in the floodway. This includes land preparation activities such as filling, grading, clearing, and paving, etc., undertaken before the actual start of construction of the building. No action shall be taken by the Director until a permit has been issued by the Indiana Natural Resources Commission granting approval for construction in the floodway. Once a permit has been issued by the Indiana Natural Resources Commission, the Director may issue the Improvement Location Permit, provided the provisions contained in Sections 6, 7 and 8 of this chapter and in Chapter 6 of the Brown County Zoning Ordinance have been met. The Improvement Location Permit cannot be less restrictive than the permit issued by the Indiana Natural Resources Commission.
2. If the site is located in an identified floodway fringe, then the Director may issue the Improvement Location Permit provided the provision contained in Sections 6, 7 and 8 of this chapter and in Chapter 6 of the Brown County Zoning Ordinance have been met. The key provision is that the top of the lowest floor of any new or substantially improved structure shall be at or above the Flood Protection Grade (FPG).
3. If the site is an identified floodplain where the limits of the floodway and floodway fringe have not yet been determined (shown as Zone A on the Flood Insurance Rate Map), and the drainage area upstream of the site is greater than one square mile, the Director shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Indiana Department of Natural Resources for review and comment. No action shall be taken by the Director until either a permit for construction in the floodway or a letter of recommendation Flood Protection Grade has been received from the Indiana Department of Natural Resources. Once the Director has received the proper permit or letter of recommendation approving the proposed development, an Improvement Location Permit may be issued provided the conditions of the Improvement Location Permit are not less restrictive than the conditions received from the Indiana Natural Resource Commission and the provisions contained in Sections 6, 7, and 8 of this chapter and in Chapter 6 of the Brown County Zoning Ordinance have been met.
4. If the site is in an identified floodplain where the limits of the floodway and floodway fringe have not yet been determined and the drainage area upstream of the site is less than one square mile, the Director shall require the applicant to provide an engineering analysis showing the limits of the floodway, floodway fringe and the 100 year elevation for the site. Upon receipt of this information, the Director may issue the local Improvement Location Permit, provided that the provisions contained in sections 7 and 8 of this ordinance have been met.

#### 10.6 Preventing Increased Damages

No development in the SFHA shall create a damaging or potentially or potentially damaging increase in flood heights or velocity or threat to public health and safety.

- A. Within the floodway identified on the FEMA Flood Boundary and Floodway Map, FIRM, or in an engineering analysis provided in accordance with Section 10.5 (B) (4), the following standards shall apply:
  - 1. no development shall be allowed which acting alone or in combination with existing or future similar work, will cause any increase in the elevation of the regulatory flood; and
  - 2. for all projects involving channel modifications or fill (including levees) Brown County, Indiana shall submit a request to the Federal Emergency Management Agency to revise the regulatory flood data.
- B. Within all SFHAs identified as A Zones (no 100-year flood elevation and/or floodway/floodway fringe delineation has been provided) the following standard shall apply: the total cumulative effect of the proposed development when combined with all other existing and anticipated developments, will not increase the regulatory flood elevation more than one-tenth (0.1) of one foot and will not increase flood damages or potential flood damages.
- C. Within all SFHAs, the following Public Health Standards apply:
  - 1. No development in the SFHA shall include locating or storing chemicals, explosives, buoyant materials, flammable liquids, pollutants, or other hazardous or toxic materials below the Flood Protection Grade, unless such materials are stored in a floodproofed storage tank or floodproofed building constructed according to the requirements of Sections 7 and 8 of this chapter.
  - 2. New and replacement sanitary sewer lines and on-site waste disposal system may be permitted providing all manholes or other above ground openings located below the FPG are watertight.

#### 10.7 Protecting Buildings – Requirement: Scope

- A. In addition to the damage prevention requirements of Section 6, all buildings to be located in the SFHA shall be protected from flood damage below the FPG.
- B. This building protection requirement applies to the following situations:
  - 1. construction or placement of any new building having a floor area greater than 400 square feet;
  - 2. structural alterations made to an existing (previously unaltered) building, the cost of which equals or exceeds forty percent (40%) of the value of the pre-altered building (excluding the value of the land);
  - 3. structural alterations made to any previously altered building;
  - 4. reconstruction or repairs made to a damaged building that are valued at or more than forty percent (40%) of the market value of the building (excluding the value of the land) before damage occurred;



5. installing a manufactured home on a new site or a new manufactured home on an existing site. This chapter does not apply to returning the existing manufactured home to the same site it lawfully occupied before it was removed to avoid flood damage; and
6. installing a recreational vehicle on a site for more than fourteen (14) days.

#### 10.8 Protecting Buildings – Methods

The following protection requirement of this chapter may be met by one of the following methods. The Director shall maintain a record of compliance with these building protection standards as required in Section 3 of this chapter.

- A. A residential or nonresidential building may be constructed on a permanent landfill in accordance with the following;
  1. the fill shall be placed in layers no greater than one foot deep before compacting to ninety-five percent (95%) of the maximum density obtainable with the Standard Proctor Test method;
  2. the fill should extend at least ten (10) feet beyond the foundation of the building before sloping below the FPG;
  3. the fill shall be protected against erosion and scour during flooding by vegetative cover, riprap or bulkheading. If vegetative cover is used, the slopes shall be no steeper than three (3) horizontal to one (1) vertical;
  4. the fill shall not adversely affect the flow of surface drainage from or onto neighboring properties;
  5. the top of the lowest floor (see definition of lowest floor in Section 2, Definitions), including basements, shall be at or above the FPG.
- B. A residential or non-residential building may be elevated in accordance with the following:
  1. the building or improvements shall be elevated on posts, piers, columns, extended walls, or other types of similar foundation provided:
    - i. walls of any enclosure below the elevated floor shall be designed to automatically equalize hydrostatic flood forces on the walls by allowing for the entry and exit of flood waters, through providing a minimum of two openings (in addition to doorways and window) having a total area of one (1) square inch for every one (1) square feet of enclosed area subject to flooding.
    - ii. any enclosure below the elevated floor is used for storage of vehicles and building access.
  2. the foundation and supporting members shall be anchored and aligned in relation to flood flows and adjoining structures so as to minimize exposure to known hydrodynamic forces such as buoyancy, current, waves, ice, and floating debris.

3. all areas below the FPG shall be constructed of materials resistant to flood damage. The top of the lowest floor (including basement) and all electrical, heating, ventilating, plumbing, and air conditioning equipment and utility meters shall be located at or above the FPG. Water and sewer pipes, electrical and telephone lines, submersible pumps, and other waterproofed service facilities may be located below the FPG.
- C. Manufactured homes to be installed or substantially improved on a site must meet one of the following anchoring requirements:
1. the manufactured home shall be elevated on a permanent foundation such that the lowest floor shall be at or above the FPG and securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. This requirement applies to all manufactured homes to be placed on a site:
    - a. outside a manufactured home park, P.U.D., or subdivision;
    - b. inside a manufactured home park, P.U.D., or subdivision;
    - c. in an expansion to an existing manufactured home park, P.U.D., or subdivision; or
    - d. in an existing manufactured home park, P.U.D., or subdivision; on which a manufactured home has incurred “substantial damage” as a result of a flood.
  2. the manufactured home shall be elevated so that the lowest floor of the manufactured home chassis is supported by reinforced piers or other foundation elements that are no less than thirty-six (36) inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. This requirement applies to all manufactured homes to be placed on a site in an existing manufactured home park, P.U.D., or subdivision that has not been substantially damaged by a flood.
- D. Recreational vehicle placed on a site shall either:
1. be on the site for less than fourteen (14) consecutive days;
  2. be fully licensed and ready for highway use (defined as being on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions); or
  3. meet the requirements for “manufactured homes” in Subsection C above.
- E. A non-residential building may be floodproofed to the FPG (in lieu of elevating) if done in accordance with the following:
1. a Registered Architect or a Registered Professional Engineer shall certify that the building has been designed so that below the FPG, the structure and attendant utility facilities are watertight and capable of resisting the effects of the regulatory flood. The building designs shall take into account flood velocities, duration, rate of rise, hydrostatic pressures, and impacts from debris or ice; and,

2. floodproofing measures shall be operable without human intervention and without an outside source of electricity.

#### 10.9 Other Development Requirements

All owners of manufactured home parks, P.U.D.s, or subdivisions located within the SFHA identified as Zone A on the Brown County FIRM shall develop an evacuation plan for those lots located in Zone A and file it with the Plan Commission and have it filed and approved by the appropriate community emergency management authorities.

#### 10.10 Variances

- A. The Brown County Area Board of Zoning Appeals (BZA) may consider issuing a variance to the terms and provisions of this chapter provided the applicant demonstrates that:
  1. there exists a good and sufficient cause for the requested variance;
  2. the strict application of the terms of this chapter will constitute an exceptional hardship to the applicant; and
  3. the granting of the requested variance will not increase flood heights, create additional threats to public safety, cause additional public expense, create nuisance, cause fraud or victimization of the public, or conflict with existing laws or ordinances.
- B. The BZA may issue a variance to the terms and provisions of this chapter subject to the following standards and conditions:
  1. no variance for a residential use within a floodway subject to Section 6, Subsections (a) or (b), of this chapter may be granted;
  2. any variance granted in a floodway subject to Section 6, Subsections (a) or (b), of this chapter will require a permit from the Indiana Department of Natural Resources;
  3. variances to the Building Protection Methods of Section 7 may be granted only when a new structure is to be located on a lot of one-half (1/2) acre or less in size, continuous to, and surrounded by, lots with existing structures constructed below the flood protection grade;
  4. variance may be granted for the reconstruction or restoration of any structure individually listed on the Register of Historic Places or the Indiana State Survey of Historic Architectural, Archaeological, and Cultural Sites, Structures, Districts, and Objects;
  5. all variances shall give the minimum relief necessary and be such that the maximum practical flood protection will be given to the proposed construction; and
  6. the BZA shall issue a written notice to the recipient of a variance that the proposed construction will be subject to increased risks to life and property and could require payment of excessive flood insurance premiums.

- C. An applicant for a variance from the terms and provisions of this chapter shall be subject to the variance procedures set forth in Chapter 3, Section 6 of the Brown County Zoning Ordinance.

#### 10.11 Disclaimer of Liability

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on available information derived from engineering and scientific methods of study. Larger floods can and will occur on rare occasions. Therefore, this chapter does not create any liability on the part of Brown County, Indiana, the Brown County Area Plan Commission, the Brown County Area Board of Zoning Appeals, the Indiana Department of Natural Resources, or the State of Indiana, or any agents or employees of the foregoing entities for any flood damage that results from reliance on this chapter or any administrative decision made lawfully thereunder.

#### 10.12 Violations

Failure to obtain an Improvement Location Permit in the SFHA or failure to comply with the requirements of a permit or conditions of a variance shall be deemed to be a violation of this chapter and, thus, of the Brown County Zoning Ordinance. All violations shall be considered a common nuisance and be treated as such in accordance with the provisions of the Brown County Zoning Ordinance and relevant Indiana Code sections.

- A. A separate offense shall be deemed to occur for each day the violation continues to exist.
- B. The Plan Commission shall inform the owner that any such violation is considered a willful act to increase flood damages and therefore may cause coverage by a Standard Flood Insurance Policy to be suspended.
- C. Nothing herein shall prevent Brown County, Indiana from taking other lawful actions to prevent or remedy any violations. All costs connected therewith shall accrue to the person or persons against whom the prevention or remedial violations were taken.

#### 10.13 Vested Rights and Conflicts

This chapter does not repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. Where this chapter and other ordinances, easements, covenants, or deed restrictions conflict or overlap, whichever imposes the more stringent restrictions shall take precedence.

#### 10.14 Severability

The provisions and sections of this chapter shall be deemed severable and the invalidity of any portion or application of this chapter shall not affect the validity of the remainder or of the valid applications.

## **CHAPTER 11 - AREA PLAN COMMISSION**

### **11.1 Purpose**

The purpose of this chapter is to improve the health, safety, convenience, and welfare of the citizens of Brown County, Indiana, and the participating municipalities within Brown County, Indiana, and to plan for the future of Brown County, Indiana, and the participating municipalities within Brown County, Indiana, to the end that:

- A. residential areas provide healthful surroundings for family life in keeping with the Brown County rural tradition of preservation of its quiet country atmosphere and scenic beauty;
- B. new communities grow only with adequate public way, utilities, health, educational, and recreational facilities in keeping with the Brown County rural tradition of preservation of its quiet country atmosphere and scenic beauty;
- C. the needs of residents, agriculture, industry, and business be recognized in future growth;
- D. the growth of the County and of the participating municipalities are carefully controlled and managed and is commensurate with and promotive of the efficient and economical use of public funds; and
- E. highway systems within Brown County, Indiana, and the participating municipalities within Brown County, Indiana be carefully planned.

### **11.2 Establishment**

The Brown County Area Plan Commission ("Plan Commission") is hereby re-established in accordance with the Area planning law set forth in Indiana Code Chapter 36-7-4.

### **11.3 Membership**

The Plan Commission shall consist of seven (7) members, as follows:

- A. Two (2) members, appointed by the Board of County Commissioners, who may be a member of the Board of County Commissioners;
- B. One (1) member, appointed by the County Council, who may be a member of the County Council;
- C. One (1) member, appointed by the Nashville Town Council, who may be a member of the Town Council;
- D. One (1) member, appointed by the Brown County School Board who shall be the Superintendent of Schools, the Assistant Superintendent of Schools, an administrative official of the School Corporation, or a member of the Brown County School Board;
- E. The Brown County Surveyor or an individual appointed by the Brown County Surveyor; and
- F. The County Agricultural Extension Educator.

#### 11.4 Qualifications of Members

Each member shall be appointed because of: the member's knowledge and experience in the community affairs in Brown County or elsewhere; the member's awareness of the social, economic, agricultural, and industrial problems of the area; and the member's interest in the stewardship of the area. A member may not hold other elective or appointive office in municipal, county, or state government except in the case of a membership on the school board, the Park board, the Board of Zoning Appeals, the board of directors for the public utilities, or the board of trustees for utilities created under I.C. 8-1-11.1, or as otherwise authorized by law (e.g., I.C. 36-7-4-208). Excepting the members established by Sections 3(D) and (F) above, a member must be a resident of Brown County, Indiana. A member shall be knowledgeable in the area from which the member is appointed.

#### 11.5 Terms of Office

A. The term of the member appointed pursuant to Subsection 3(A) shall expire on January 1, 1998. The term of the member appointed pursuant to Subsection 3(B) shall expire on January 1, 1995. The term of the member appointed pursuant to Subsection 3(C) shall expire on January 1, 1996. All subsequent appointments made pursuant to Subsections (A), (B), and (C) shall be for a term of four (4) years which term expires on the first Monday of January of the fourth year following the member's appointment. The member appointed pursuant to Subsection 3(D) shall serve until removed by the Brown County School Corporation. However, the School Corporation may adopt a term limitation for its appointee of not less than four (4) years. The term of the member appointed pursuant to Subsection 3(F) shall be coextensive with the appointee's status as the County Agricultural Extension Educator for Brown County, Indiana. The member appointed pursuant to Subsection 3(E) shall be coextensive with the appointing Surveyor's term of office.

B. A member serves until his successor is appointed and qualified. A member may be reappointed.

#### 11.6 Removal of Member

The appointing authority may remove a member from the Plan Commission for cause. The appointing authority must mail notice of the removal along with written reasons for the removal to the member at his residence address. A member who is removed may, within thirty (30) days after receiving notice of the removal, appeal the removal to the Brown Circuit Court. The Circuit Court may, pending the outcome of the appeal, order the removal or stay the removal of the member.

#### 11.7 Vacated Membership

If a vacancy occurs among the Plan Commission membership, then the appointing authority shall appoint a member for the unexpired term of the vacating member.

#### 11.8 Expenses

IF the Plan Commission determines that it is necessary or desirable for members or employees to join a professional organization or to attend a conference or interview dealing with planning or related problems, the Plan Commission may pay the applicable membership fees and all actual expenses of the members or employees, subject to County Council appropriation of funds.

### 11.9 Mileage and Compensation

I.C. 36-2-7-2 notwithstanding, all members of the Plan Commission are entitled to receive the following: a sum for mileage, for each mile necessarily traveled while performing the member's duties, in an amount that is equal to the amount paid to state employees for mileage and a sum for compensation for services as a Plan Commission member in an amount that the County Council may determine for attendance at Plan Commission meetings.

### 11.10 Conflict of Interest

A Plan Commission member may not participate as a Plan Commission member in a hearing or decision of the Plan Commission concerning a matter in which the member has a direct or indirect financial interest. The Plan Commission shall enter in its records the fact that member has such a disqualification. A Plan Commission member shall not directly or personally represent another person in a hearing before the Plan Commission, the Board of Commissioners, the Nashville Town Council or the legislative body of any other participating municipality concerning a zoning matter or any other matter related to zoning including, but not limited to, annexation. A Plan Commission member may not receive mileage or compensation under Section 9 above for attendance at a meeting at which the member is disqualified from participation, during any part of the meeting, for having a direct or indirect financial interest in a matter before the Plan Commission.

### 11.11 Official Action

An action of the Plan Commission is not official unless it is authorized, at a regular or special meeting, by a majority of the entire Plan Commission membership or by a majority of the Executive Committee pursuant to Section 18 of this chapter.

### 11.12 President and Vice President

At its first regular meeting in each year, Plan Commission shall elect from its membership a president and a vice president. The vice president may act as president of the Plan Commission during the absence, disability or recusal of the president.

### 11.13 Secretary

The Plan Commission may appoint and fix the duties of a secretary, who is not required to be a member of the Plan Commission.

### 11.14 Meetings and Records

- A. The Plan Commission shall fix the time for holding regular meetings each month or as necessary. Special meetings of the Plan Commission may be called by the president or by two (2) members of the Plan Commission upon written request to the secretary. The secretary shall send to all members, at least three (3) days before the special meeting, a written notice fixing the time and place of the meeting. Written notice of a special meeting is not required if: (1) the date, time and place of a special meeting are fixed in a regular meeting; and, (2) all members of the Plan Commission are present at that regular meeting. All regular and special meetings of the Plan Commission shall be open to the public, except that the Plan Commission may schedule executive session meetings pursuant to I.C. 5-14-1.5-1 et seq.

- B. The Plan Commission shall keep minutes of its proceedings, keep records of its examinations and other official actions; prepare written findings of fact in support of each of its decisions; and record the vote, disqualification, abstention, or failure to vote of each member upon each question. All Plan Commission minutes and records shall be filed in the office of the Plan Commission and shall be public records to the extent required by I.C. 5-14-3-1 et seq.

#### 11.15 Staff and Services

- A. When there is a vacancy in the position of executive director of the planning department, the Plan Commission shall recommend to the Commissioners a candidate for the position.
- B. The Plan Commission shall prescribe the qualifications of, appoint, remove, and, with the consent of the executive director, fix the compensation of the employees of the Plan Commission, which compensation must conform to the salaries and compensations fixed before that time by the County Council. The salaries and compensation shall be consistent with the Brown County salary study. The Plan Commission shall delegate authority to its employees to perform ministerial acts in all cases except where final action of the commission is necessary.
- C. The Plan Commission may contract for special or temporary services and any professional counsel.
- D. The Plan Commission may designate a hearing examiner or a committee of the Plan Commission to conduct any public hearing required to be held by the Plan Commission. Such a hearing must be held upon the same notice and under the same rules as a hearing before the entire Plan Commission. The examiner or committee shall report findings of fact and recommendations for decision to the Plan Commission. The Plan Commission shall, by rule, provide reasonable opportunity for interested persons to file exceptions to the findings and accordance with those rules (or is filed, in any event, if the Plan Commission has not promulgated rules), the Plan Commission may render its decision without further hearing.

#### 11.16 General Powers and Duties

The Plan Commission shall

- A. Supervise, and make rules for, the administration of the affairs of the Plan Commission;
- B. Prescribe uniform rules pertaining to investigations and hearings;
- C. Record and file all bonds and contracts and assume responsibility for the custody and preservation of all papers and documents of the Plan Commission;
- D. Prepare, publish, and distribute reports, ordinances and other material relating to activities authorized under this chapter;
- E. Adopt a seal;
- F. Certify to all official acts;



- G. Supervise the fiscal affairs of the Plan Commission;
- H. Prepare and submit an annual budget in the same manner as other County departments and be limited in all expenditure to the provisions made for the expenditures by the County Council;
- I. Sue and be sued collectively by its legal name "Brown County Area Plan Commission" with service of process on the President of the Plan Commission;
- J. Make recommendations to the Board of Commissioners or to the legislative body of any participating municipality concerning:
  - 1. the adoption of the comprehensive plan, ordinance and amendments; and
  - 2. any other matter, within the jurisdiction of the Plan omission, authorized by the area planning law;
- K. Render decisions concerning and approve:
  - 1. plats or replats of subdivisions;
  - 2. development plans for residential, commercial, and industrial uses;
  - 3. waivers of subdivision standards;
- L. Assign street numbers to lots and structures and renumber lots and structures, and notify the Circuit Court Clerk or Board of Registration, the administrator of the County's enhanced emergency telephone system, and United States Postal Service of the numbering or renumbering no later than the last day of the month following the month in which the action is taken; and
- M. Make recommendations to the Board of Commissioners or the legislative body of any participating municipality, as appropriate, concerning the naming and renaming of streets and road, in accordance with guidelines set forth in Section 23 of this Chapter, and notify the Circuit Court Clerk or Board of Registration, the administrator of the County's enhanced emergency telephone system, and the United State Postal Service of the naming or renaming no later than the last day of the month following the month in which the Commissioners' or Council's action is taken; and
- N. Establish a schedule of reasonable fees to defray the administrative costs connected with: processing and hearing administrative appeals and petitions for rezoning, special exceptions, conditional uses, temporary uses and variances; issuing permits; and, other official actions taken under the Zoning Ordinance.

### 11.17 Citizen Committees

By resolution, the Plan Commission may establish advisory committees of citizens interested in problems of planning and zoning. In its resolution establishing such a committee, the Plan Commission shall specify the terms of its members, its purposes, and whether the committee is of perpetual or limited duration. Each advisory committee shall:

- A. study the subject and problems specified by the Plan Commission and make recommendations to the Commission regarding the subject and problems specified and recommend additional problems in need of study;
- B. advise the Plan Commission concerning how the subject and problems relate particularly to different areas and groups in the community; and
- C. if invited by the Plan Commission to do so, sit with and participate, without the right to vote, in the deliberations of the Commission, when subjects of mutual concern are discussed.

A citizen committee shall report only to the Plan Commission and shall make inquiries and reports only on the subject and problems specified by the Plan Commission's resolution establishing the committee.

### 11.18 Executive Committee

- A. The Plan Commission may establish an executive committee of not less than three (3) nor more than six (6) persons appointed by the Plan Commission from its membership. The establishment of the executive committee, the naming of its individual members, and the adoption of rules governing its operation requires a two-thirds (2/3) majority vote of the entire membership of the Plan Commission.
- B. A majority of the executive committee may act in the name of the Plan Commission; but if there are any dissenting votes, a person voting in the minority may appeal the decision of the executive committee to the Plan Commission.

### 11.19 Gifts and Grants

The Plan Commission as a whole may accept gifts, donations, and grants from private or governmental sources for advisory planning purposes. Any money so accepted shall be deposited with the Brown County Treasurer, in a special nonreverting Plan Commission fund to be available for expenditures by the Plan Commission for the purposes designated by the source. The Brown County Auditor shall draw warrants against the special nonreverting fund only on vouchers signed by the president and secretary of the Plan Commission

### 11.20 Alternate Procedure

- A. The Plan Commission may appoint a hearing officer and may establish an alternate procedure under which the hearing officer may approve or deny variances from the design standards of the Zoning Ordinance, special uses, conditional uses, and special exceptions from the terms of the Zoning Ordinance. With respect to such matters, the hearing officer shall have the power of the Board of Zoning Appeals. The hearing officer may be a Board of

Zoning Appeals member, a Plan Commission staff member, or any other person. The Plan Commission may appoint more than one hearing officer. A hearing officer serves at the pleasure of the Plan Commission and may be removed by the Plan Commission at any time, without cause.

- B. With respect to an alternate procedure, the Plan Commission may adopt rules:
  - 1. limiting the kinds of variance, special use, contingent use, conditional use, or special exception petitions that may be filed under the alternate procedure;
  - 2. permitting the hearing officer, in appropriate circumstances, to transfer a petition filed under the alternate procedure to the Board of Zoning Appeals;
  - 3. requiring the creation of minutes and records of the proceedings before the hearing officer and the filing of the minutes and records as public records; and
  - 4. regulating conflicts of interest and communications with the hearing officer, so as to require the same level of conduct required of the Board of Zoning Appeals in the conduct of its business.
- C. The Plan Commission staff may file a written objection to a petition for a variance, exception, or use if:
  - 1. it would be injurious to the public health, safety, morals, and general welfare of the community; or
  - 2. the use or value of the area adjacent to the property included would be affected in a substantially adverse manner.
- D. If a written objection is filed by the Plan Commission staff, the petition shall:
  - 1. be considered withdrawn or
  - 2. be transferred to the Board of Zoning Appeals if requested by the petitioner.
- E. The Plan Commission staff may indicate that it does not object to the approval of the petition if specified conditions are attached. If the applicant does not accept these conditions, the petition shall:
  - 1. be considered withdrawn or
  - 2. be transferred to the Board of Zoning Appeals if requested by the petitioner.
- F. The hearing officer may impose conditions and may permit or require the owner of a parcel of property to make a written commitment concerning the use or development of that parcel, in the same manner that the Board of Zoning Appeals may impose conditions or require written commitments. If the applicant for the variance, exception, or use does not accept these conditions or make the commitment, the petition shall:
  - 1. be considered withdrawn or
  - 2. be transferred to the Board of Zoning Appeals if requested by the petitioner.

- G. The hearing officer may not modify or terminate any commitment made to the hearing officer or to the Board of Zoning Appeals.
- H. A decision of a hearing officer under the alternate procedure may not be a basis for judicial review, but it may be appealed to the Board of Zoning Appeals. An interested person who wishes to appeal a decision of a hearing officer under the alternate procedure must file the appeal with the Board of Zoning Appeals within fourteen (14) days after the decision is made.

#### 11.21 Review of Zoning Ordinance

The Plan Commission shall periodically review both the text of the Zoning Ordinance and the Zoning Maps. Such review shall be performed on a regular schedule established by the Plan Commission, but not less frequently than once every two years. Upon review of the text and maps, the Plan Commission shall recommend all appropriate changes to the County Commissioners or to the legislative body of any participating municipality as proposed amendments to the Zoning Ordinance.

#### 11.22 Plat Committee

The Plan Commission may appoint a plat committee to hold hearings on and approve plats and replats, on behalf of the Plan Commission, under the circumstances prescribed in the Subdivision Control Ordinance. The plat committee consists of three (3) or five (5) persons, with at least one (1) of the members being a member of the Plan Commission. Each appointment of a member of the plat committee is for a term of one (1) year, but the Plan Commission may remove a member from the plat committee at any time, with or without cause. The Plan Commission must mail notice of the removal, along with written reasons, if any, for the removal, to the member at his residence address. A member who is removed may not appeal the removal to a court or otherwise. The plat committee may take action only by a majority vote.

#### 11.23 Naming and Renaming Streets

In making proposals to the Board of Commissioners or the legislative body of any participating municipality regarding the naming and renaming streets, the Plan Commission shall be guided by the following policies:

- A. Duplicate street names and names that sound alike shall not be allowed;
- B. Directional or relative names should not be used (e.g., North Drive, Spearsville Road);
- C. A continuous street should not change names when the direction of the street changes;
- D. Predominately north-south streets shall have an "N" prefix if north of the center line and an "S" prefix if south of the center line;
- E. Predominately east-west streets shall have an "E" prefix if east of the center line and a "W" prefix if west of the center line;
- F. Dead-end streets or courts that have no possibility of extension to another road should have a name that is based on the name of the street they connect to (e.g., E. Poplar Grove Lane, N. Poplar Grove Court, N. Poplar Grove Circle) ;

- G. The Postmaster who serves the area in which the named or renamed street will be or is located should be given the opportunity to review and comment on proposed names before the Plan Commission approves a proposal; and
- H. The Brown County Highway Superintendent or the official responsible for street or road maintenance for a participating municipality, as appropriate, must be given the opportunity to review and comment on proposed names before the Plan Commission approves a proposal.

## CHAPTER 12 - WIRELESS COMMUNICATIONS FACILITIES

### 12.1 Purpose

The purpose of this chapter is to:

1. regulate the design, construction, placement, modification, and removal of wireless communications facilities;
2. allow the providers of wireless communications services to provide for adequate coverage and capacity while minimizing the total number and overall impact of additional towers;
3. encourage co-location, the use of attached facilities, and the use of appropriate public and semi-public properties whenever possible even if such a site is considered to be less advantageous to the service provider;
4. require designs and parameters compatible with adjacent land uses, and to conserve the scenic, historic, aesthetic and environmental quality of Brown County and the tourism industry based thereon from the adverse impacts of wireless communications facilities development;
5. promote long-range planning and cooperation between the citizens and property owners of Brown County, the Brown County Area Plan Commission, the Board of Zoning Appeals, the County Commissioners, and the wireless communications services providers;
6. protect the public health, safety and general welfare of the community;
7. give due regard to the policies of Brown County's Comprehensive Plan when evaluating proposals for wireless communications facilities.

### 12.2 Permitted Uses

#### A. Permitted Uses without a Special Exception

1. Co-location: placement of an antenna array if located on:
  - a. a legally existing or previously approved wireless communication facility (WCF);
  - b. a previously constructed broadcast tower;
  - c. an existing communications tower where the engineering specifications of the tower permit and no increase in the height of the tower is required.
2. Attached wireless communication facility. An antenna array may be integrated with/within another existing structure (e.g., a building facade or water tower) as long as no more than a 15 ft. increase in the height of the existing structure is required.

3. Replacement of a legal, existing WCF, support structure, or antenna array with a similar facility of an equal or smaller size. This replacement is subject to the application procedures, general requirements and abandonment provisions of the Chapter.

B. Permitted Uses with a Special Exception:

In addition to the requirements of this Chapter, all new wireless communications facilities not included in 12-2(A) above, must receive a Special Exception from the Brown County Board of Zoning Appeals and shall be subject to the requirements of Chapter 3 (Special Exceptions), Sections 1, 4, 5, and Chapter 4, sections 11, 12. Special Exception approval shall be required for placement of a new WCF in all zoning districts.

C. Exemptions:

The following wireless communications facilities are exempt from the provisions of this chapter: police, fire, ambulance and other emergency dispatch; amateur (HAM) radio; antennas used solely for residential household television and radio reception and satellite dishes measuring 2 meters or less in diameter.

D. Prohibitions:

Any WCF not expressly permitted under subsection (A) Permitted Uses, subsection (B), Permitted Uses with a Special Exception, or not exempted under subsection (C), Exemptions, are prohibited. Speculative construction of towers for future leasing (i.e., without specific plans for antennas at the time the application for the tower is submitted) is specifically prohibited.

E. Conditions of Approval: The following conditions apply to all permitted uses:

1. All wireless communications facilities and support structures shall be designed for, and constructed in accordance with, provisions for co-location and support structures shall be capable of accommodating at least four antenna array;
2. Applicants and/or petitioners agree to make a good faith effort on terms consistent with any applicable national agreement or on terms common to the region, to accommodate requests for co-location that originate from a provider, from the WCF owner, or from the Area Plan Commission;
3. Property owners and/or agents shall accept and accommodate the provisions for co-location prescribed by this ordinance, and shall agree to the renting or leasing of space on a support structure of WCF, for co-location, at fair market prices and terms without discrimination;
4. Upon completion of the support structure of WCF, owners and/or operators of the support structure or WCF agree to make a good faith effort to accommodate co-location (placement of additional antenna arrays) in a timely manner, including those WCF or antenna arrays proposed by other service providers.

5. No approval for a WCF or support structure shall become valid until written approval of a written statement of no objection from all relevant federal, state or local agencies with regulatory authority has been submitted to the Director of the Area Plan Commission.

### 12.3 General Requirements

The following requirements apply to all WCF that are erected or placed within the County jurisdictional area after the effective date of this chapter:

- A. For each application under Chapter 12, section 2 (A) and (B), the property owner(s), WCF owner(s), and wireless communications service provider(s) shall be considered co-applicants and shall be jointly and severally subject to the provisions of this ordinance.
- B. Each application for a permit to add to an existing WCF or for a Special Exception for placement of new WCF, WCF support structure or antenna array shall be accompanied by the following:
  1. Application Form: A completed application form, with original signatures from all applicants including the property owner(s), WCF owner(s), and wireless communications service provider(s).
  2. Statement: A written statement, with illustrations, that describes the proposed wireless communications facility (e.g., type of construction, tower height, provisions for co-location).
  3. Inventory: Inventory of the provider's existing wireless communications facilities and antenna arrays within Brown County and within the area three (3) miles outside the County boundaries, along with a plan describing any potential future facility locations. The inventory and master plan shall include:
    - a. locations of all existing and proposed facilities (by property address, latitude/longitude coordinates, and township, range, section, ¼ section) shown on a plat map obtained from the Auditor's office;
    - b. height and type of each existing and proposed facilities (including antenna types, output frequency, number of channels, power output and maximum power output per channel);
    - c. information on the practical capacity for accommodating additional co-located antenna arrays for each existing and proposed facility;
    - d. delineation of existing and anticipated coverage patterns in Brown County with brightly colored radial plots showing clear demarcations between signal strengths.

For each existing and proposed facility, signal propagation and radio frequency studies and plots shall be prepared, clearly identified, and signed by a qualified radio frequency engineer (power density calculations shall be in accordance with "worst case" formulas, assuming operation a maximum power and maximum capacity);



- e. type(s) of services to be provided (i.e. paging, PCS, etc.) for each existing or proposed facility.
4. Site Plan: A drawing to scale, prepared by a registered land surveyor, with the following information:
- a. property lines, with distances and bearing illustrated;
  - b. existing site improvements , including buildings, structures, and ponds;
  - c. existing/proposed roadways and all easements on the property;
  - d. proposed wireless communications facilities; and
  - e. proposed landscaping, including existing vegetation where applicable.
5. Maintenance and Facility Removal Agreement: For each WCF or support structure, a maintenance and facility removal agreement signed by the applicants and/or petitioners. This agreement shall
- a. bind the applicants and all successors in interest to properly maintain the exterior appearance of all facilities and, ultimately, remove all facilities upon abandonment in compliance with the provisions of this chapter and any conditions of approval.
  - b. bind the applicants to pay all costs for enforcement of the agreement and to reimburse Brown County for any and all costs incurred to perform any work required by this agreement that the applicants fail to perform.
  - c. be signed by the applicants and by the Director of the Area Plan Commission and recorded in the office of the Brown County Recorder.
6. Indemnification: Brown County shall not enter into any lease agreement or authorize the placement of any WCF or support structure unless Brown County obtains an adequate indemnification from the applicants (owners/operators) and/or wireless communications service providers. This indemnification must:
- a. release Brown County from all liability arising out of the construction, operation, removal or repair of a wireless communications facility and/or antenna array. Parties to a wireless communications agreement agree to not sue to seek any monies or damages from Brown County in connection with the above.
  - b. indemnify and hold harmless Brown County, its elected and appointed officials, agent, servants and employees, from and against all claims, demands, or causes of action whatsoever, and the resulting losses, costs, expenses, attorney's fees, liabilities, damages, orders, judgments or decrees, sustained by Brown County or any third party arising out of, or resulting from each wireless communications facility's owner's, operator's agent's, employee's, or servant's negligible acts, errors, or omissions.
  - c. provide that the covenants and representations relating to the indemnification provision shall survive the term of any agreement and continue in force an effect as to the responsibility of the party to indemnify.

7. Proof of insurance: At a minimum, adequate insurance covering liability, bodily injury and property damage must be obtained and maintained for the entire period the wireless communications facility is in existence. The Brown County Area Plan Commission shall be named as an additional insured. A certificate of insurance verifying such insurance shall be submitted at the time of application.
  8. Reports. Copies of inspections or reports that are required by, and have been submitted to, the FAA and/or the FCC.
  9. Fee. The amount of the fee shall be set in accordance with the standards set by the Area Plan Commission.
  10. Proof of Escrow Account. A certificate of funds in escrow, for the benefit of Brown County, in the amount of five thousand dollars (\$500) per support structure and one thousand dollars (\$1000) per antenna array (the amount applicable to support structures shall not apply to Attached WCF.) The escrow account shall be established with a bank located within sixty (60) miles of Nashville, Indiana. The Board of County Commissioners or the Area Plan Commission shall have the authority to draw funds from the account as needed to ensure compliance with the maintenance, indemnification, insurance and abandonment provisions of this Chapter. The account may be released or closed upon the discontinuation of the subject WCF and upon demonstration of compliance with all requirements of this Chapter.
- C. The requirements of (B) (6), (7), (8) and (10) above are continuing requirements and are binding on the Applicants, their successors and assigns. In the event of a draw of funds, the Applicants shall be required to restore the escrow account to its original amount. The Applicants, their successors and assigns shall be required to submit documented proof of compliance with the foregoing requirements as follows:
1. annually;
  2. when ownership of the facility changes;
  3. when ownership of the WCF site changes;
  4. prior to the expiration or invalidation of a submitted document;
  5. upon any other event that would reasonably call the validity of effectiveness of the original document into question.
- D. The failure to maintain the insurance coverage or the escrow account in the manner required above shall be a violation of the Brown County Zoning Ordinance. In addition to all other available remedies, the Area Plan Commission or its Director may seek a court order that mandates the maintenance of the coverage of account and/or that immediately and permanently prohibits the use of the WCF until compliance with this Chapter is demonstrated.
- E. Each application for placement of a wireless communications facility or antenna array shall be subject to Co-location Review, as described in Section 12.5.

- F. In the manner described in Section 12.4 below, the Area Plan Commission shall employ, on behalf of the County and at the Applicant's expense, an independent technical expert to review and assess all technical application materials or conclusions.

#### 12.4 Provisions for Hiring Independent Consultant

- A. Upon submission of an application for a WCF, the County shall select one or more independent consultants of its own choosing. These consultants shall be qualified professionals with an appropriate combination of training, record of service, and/or certification in one of the following fields: telecommunications/radio frequency engineering; structural engineering; electromagnetic fields (EMF); and, if determined by the Area Plan Commission, other fields;
- B. The Area Plan Commission Director shall provide the independent consultant with a copy of the complete application for analysis and review.
- C. The independent consultant(s) shall provide an estimate for the cost of reviewing the application to the Area Plan Commission Director. The Director shall forward this estimate in writing to the applicant and the applicant shall promptly pay this fee during the review process (separate from the general application fee). The estimate shall be regarded as a decision of the Director. No application will be processed and no public hearings (where applicable) will be scheduled until full payment has been made;
- D. The consultant(s) shall work under the direction of the Brown County Area Plan Commission and/or Board of Zoning Appeals (if a Special Exception or variance is requested). Copies of the consultant(s)' findings and reports shall be made available to the Applicant and the Area Plan Commission not less than seven (7) days prior to any scheduled public hearing(s), and the Applicant shall be given the opportunity to respond to said reports in writing and at the applicable public hearing(s).

#### 12.5 Co-location Review

Co-location shall be required for wireless communications facilities or antenna array, unless specifically exempted by the provisions of this section.

- A. Procedures. The Area Plan Commission shall, upon request and/or upon submittal of an application in conformance with Section 12.3, provide applicants with a list of all known existing and proposed wireless communications facilities or support structures that lie within one mile of the proposed site and the names of the applicable owners or providers, based upon the existing inventory of wireless communications facilities in Brown County and upon known co-location opportunities.
- B. Basis for Relief. Relief from co-location under this section shall require independent professional verification of the Applicant's data and an independent professional evaluation that supports exception from collocation. Relief from this section may be justified by the following:
  - 1. Existing wireless communications facilities or support structures do fall within location tolerances based upon radio frequency mapping;
  - 2. Proposed site(s) do not meet minimum height requirements based upon Radio Frequency engineering data;

3. Existing wireless communications facilities or support structures do not meet structural integrity requirements for the proposed antenna array; or
4. Placement of the proposed wireless communications facility and/or antenna array would impair, or be impaired by, the emission of radio frequencies.

## 12.6 Performance Standards

- A. Security. For all WCF excepting Attached WCF, a perimeter fence at least eight (8) feet high shall be installed to circumscribe and contain the WCF, along with all accessory structures and/or facilities. Use of razor wire is prohibited.
- B. Lighting.
  1. Security lighting is not required. However, if security lighting is installed it shall be confined to accessory structures(s), directed downward to minimized glare or intrusion into adjoining properties.
  2. Any WCF, support structure, or antenna array that requires illumination shall meet FAA requirements. When there is a choice between red and white strobe lights on the tower, white lights with maximum intervals between flashes shall be encouraged.
  3. Other illumination is prohibited.
- C. Landscaping.
  1. The following planting requirements shall be applied to all applications or petitions for construction of WCF and/or support structures:
    - a. A double staggered row of evergreen trees, planted at seven (7) ft. in height (measured from grade) and at no more than fifteen (15) ft. intervals along the perimeter of the fence to screen the facilities from adjoining properties; or
    - b. A mix of deciduous shade trees (2.5" caliper) and large deciduous shrubs (at least 48" in height) of sufficient density along the perimeter of the fence to adequately screen the facilities from adjoining properties.
    - c. Existing vegetation within twenty feet (20) of the security fence that is preserved shall be credited towards planting requirements.
  2. The provisions of this section may be waived, in whole or in part, by the Area Plan Commission upon a determination that: site conditions would not be adequate to support landscape plantings; or, that architectural camouflage ("stealth" design) will insure compatibility with adjoining land uses and eliminate the need for screening.
  3. All landscape plantings shall be properly maintained or replaced as necessary to ensure their good health and viability for the life of the WCF and/or support structure.
- D. Signage. Identification signage, no more than three (3) square feet in total area, shall be required for each WCF/ support structure, and/or accessory facility. Identification signage

shall include the name(s) of the facility owner(s) or operator(s) and a 24-hour emergency telephone number, and shall be affixed to a perimeter fence or entrance where possible. Signage shall be decided by the Board for each application. Advertising signage is prohibited.

E. Attached WCF. Attached WCF shall be appropriately integrated with, or within, existing structures with due consideration given to sitting/placement, color, camouflage, size and type of construction. Attached WCF shall be designed to minimize visual impact and antenna arrays shall not exceed the height of the existing structure by more than fifteen (15) feet.

F. Noise.

1. Noise-producing equipment shall be sited and/or insulated to guarantee that no increase in noise above ambient levels measured at the property line occur.
2. Backup Generators, if used, shall only be operated during power outages and for testing and maintenance purposes. Routine testing and maintenance, if conducted, shall only be conducted between the hours of 8:00 a.m. and 5:00 p.m. Monday through Saturday.

G. Color and Camouflage.

1. All WCF, support structures, accessory buildings, poles, antennas and other external facilities shall be painted upon installation and thereafter repainted as necessary with a "flat" paint. Except where dictated by the FAA, paint color shall, at the discretion of the Planning Director or Plan Commission, be designed to minimize visibility & blend with the surrounding environment.
2. Accessory buildings and/or structures shall be designed to be architecturally similar and compatible with each other, and shall not exceed twelve (12) feet in height and 750 square feet in area. Accessory buildings and/or structures shall be used only for the housing of equipment needed to service the WCF and/or antenna array(s) located on the premises. Where possible, accessory buildings and/or structures shall be attached or clustered so as to appear as one building. Exterior facades shall incorporate materials, textures and colors that blend with the surroundings to minimize visual impact.
3. The Director of the Area Plan Commission and/or Area Plan Commission shall reserve the right to require architectural camouflage, or "stealth design," if a proposed site is deemed sensitive for any of the following reasons:
  - a. the prospective site is located in, or within 300 feet of, property officially designated as "Historic" by the State of Indiana, Brown County or the village of Nashville, listed with the *Indiana Historic Site and Structures Inventory*, or located within property listed with the National Register of Historic Places.
  - b. the prospective site lies in, or within, 300 feet of a right-of-way classified as a scenic corridor by the Brown County Comprehensive Plan or the State of Indiana.

H. Materials. Excepting Attached WCF, all support structures shall be constructed of galvanized metal. The provisions of this section may be waived by the Director of the

Area Plan Commission upon a determination that architectural camouflage (“stealth” design) will satisfy the intent of this section.

I. Health and Safety.

1. All WCF and/or support structures shall be constructed, operated, maintained and monitored in compliance with all applicable federal (i.e. FCC and FAA) and state standards and requirements.
2. WCF and/or support structures that would be classified as a hazard to air navigation, as defined by the Federal Aviation Administration, shall not be permitted.

12.7 Temporary WCF

- A. Temporary WCF or antennas shall be permitted for test purposes, emergency communications or in the event of equipment failure for a maximum period of two (2) weeks, subject to the requirements of Section 12.3 (B) (1) through (5) and (7) through (10).
- B. If the application is investigating co-location opportunities for a proposed antenna array, and demonstrates with written documentation that good faith co-location negotiations are in process, a temporary WCF may be approved by the Director of the Area Plan Commission for a period not to exceed six months subject to the requirements of Section 12.3 (B) (1) through (5) and (7) through (10).
- C. An improvement location permit shall be required for each Temporary WCF.

12.8 Abandonment

- A. Any WCF or support structure that is no longer needed or used for its intended purpose shall be considered abandoned and shall be reported immediately by the service provider to the Director of the Area Plan Commission. All abandoned WCF and/or support structures shall be completely removed by, and at the expense of, the service provider and/or owner within six (6) months from the date of abandonment and the surface of the site shall be restored to a condition suitable for redevelopment.
- B. The county may remove any discontinued WCF or support structure that is not completely removed within six (6) months from the date of abandonment. Costs associated with the dismantling and removal of an abandoned WCF or support structure and site restoration shall be paid by the service provider and/or owner as bound by the terms of the maintenance and facility removal agreement described in Section 12.3 (B) (6).
- C. In the even that costs are not covered by the applicant as described above, the County reserves the right to withdraw funds, as needed, to cover costs associated with removal of an abandoned WCF through disbursement of funds from the Escrow Account [per Section 12.3 (B) (11)].

TABLE 12.1	
Performance Standard	All WCF, support structures
Type of Construction (WCF or support structure)	Designed to accommodate at least five antenna array
Maximum Permitted Height Without Variance	400 feet
Front Yard Setback (minimum)	Height of tower plus 50 feet
Side Yard Setback (minimum)	Height of tower plus 50 feet
Rear Yard Setback (minimum)	Height of tower plus 50 feet